Record of: Shane Sanderson
GUID: 817740569

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	22	Civil Procedure Aderson Francois	4.00	A	16.00	
LAWJ	002	22	Contracts Anna Gelpern	4.00	A-	14.68	
LAWJ	005	21	Legal Practice: Writing and Analysis Erin Carroll	2.00	IP	0.00	
LAWJ	008	21	Torts Paul Rothstein	4.00	B+	13.32	

	EHrs	QHrs	QPts	GPA
Current	12.00	12.00	44.00	3.67
Cumulative	12.00	12.00	44.00	3.67

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	003	22	Criminal Justice Shon Hopwood	4.00	A	16.00	
LAWJ	004	22	Constitutional Law I: The Federal System Paul Smith	3.00	B+	9.99	
LAWJ	005	21	Legal Practice: Writing and Analysis Erin Carroll	4.00	B+	13.32	
LAWJ	007	92	Property Neel Sukhatme	4.00	A-	14.68	
LAWJ	1326	50	Legislation and Regulation William Buzbee	3.00	A-	11.01	

Dean's List 2020-2021

	EHrs	QHrs	QPts	GPA
Current	18.00	18.00	65.00	3.61
Annual	30.00	30.00	109.00	3.63
Cumulative	30.00	30.00	109.00	3.63

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	126	07	Criminal Law John Hasnas	3.00	B+	9.99	
LAWJ	1491	113	~Seminar Adrianne Clarke	1.00	A-	3.67	
LAWJ	1491	115	~Fieldwork 3cr Adrianne Clarke	3.00	P	0.00	
LAWJ	1491	20	Externship I Seminar (J.D. Externship Program) Adrianne Clarke		NG		
LAWJ	165	09	Evidence Mushtaq Gunja	4.00	B+	13.32	
LAWJ	1656	08	Technology and Election Integrity Seminar Matt Blaze	2.00	A	8.00	

	EHrs	QHrs	QPts	GPA
Current	13.00	10.00	34.98	3.50
Cumulative	43.00	40.00	143.98	3.60

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	1098	05	Complex Litigation Maria Glover	4.00	B+	13.32	
LAWJ	1492	110	~Seminar Alexander White	1.00	A-	3.67	
LAWJ	1492	112	~Fieldwork 3cr Alexander White	3.00	P	0.00	
LAWJ	1492	39	Externship II Seminar (J.D. Externship Program) Alexander White		NG		
LAWJ	1712	05	Advanced Evidence Seminar Michael Pardo	3.00	A	12.00	
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties Robin Lenhardt	4.00	A-	14.68	

	EHrs	QHrs	QPts	GPA
Current	15.00	12.00	43.67	3.64
Annual	28.00	22.00	78.65	3.58
Cumulative	58.00	52.00	187.65	3.61

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	1655	05	Criminal Justice Reform Seminar Shon Hopwood	3.00	A	12.00	
LAWJ	178	05	Federal Courts and the Federal System Carlos Vazquez	4.00	A	16.00	
LAWJ	351	05	Trial Practice Murad Hussain	2.00	A-	7.34	
LAWJ	361	03	Professional Responsibility Stuart Teicher	2.00	A-	7.34	
LAWJ	394	05	Jury Trials in America: Understanding and Practicing Before a Pure Form Democracy Gregory Mize	2.00	A	8.00	

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	50.68	3.90
Cumulative	71.00	65.00	238.33	3.67

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	1713	05	Law & Neuroscience Seminar	2.00	A-	7.34	
LAWJ	1752	05	Introduction to Alternative Dispute Resolution	3.00	A-	11.01	
LAWJ	1780	08	Criminal Procedure and the Roberts Court Seminar	2.00	A	8.00	
LAWJ	268	05	Remedies in Business Litigation	3.00	A	12.00	
LAWJ	455	01	Federal White Collar Crime	4.00	A-	14.68	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	14.00	14.00	53.03	3.79
Annual	27.00	27.00	103.71	3.84
Cumulative	85.00	79.00	291.36	3.69

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter with enthusiastic support for Shane Sanderson's application for a clerkship in your chambers. I have come to know Shane through teaching him in my Criminal Justice course, my Criminal Justice Reform seminar at Georgetown University Law Center, and in our office-hours discussions.

Shane was among the strongest of my first-year Criminal Justice students in spring 2021 (our criminal justice class is essentially a criminal procedure class involving the Fourth, Fifth, and Sixth Amendments). Shane has a strong work ethic, bright intellect, and dedication to the cause of justice that will serve our legal system well in the years to come.

As a student, Shane was consistently fully prepared for my lectures. His cold-call responses consistently indicated a willingness to grapple with the material, the significance of its application, and the policy implications arising from the readings. His moral compass clearly informed our classroom discussion, and he showed an ability to advocate tenaciously on that basis while remaining thoughtful and respectful of his classmates and the teaching environment. I was deeply impressed by his ability to neatly arrange facts and distinguish doctrine in response to my classroom hypotheticals. I was therefore entirely unsurprised that Shane wrote one of the strongest papers I graded that spring.

This past fall, Shane attended my Criminal Justice Reform seminar, where he was asked to prepare a piece of legal scholarship. He was always thorough and engaging in class. In one class, former U.S. District Court Judge Mark Bennett was a guest lecturer, and Shane asked whether reversals from the circuit court ever went into his decisions on the bench, and Judge Bennett responded by saying, "that was the best question I have ever been asked," and then he proceeded to answer Shane's question in detail for the next ten minutes.

Shane's character in the classroom is due in no small part to his background. For years following high school, he worked in food service, coffeeshops and restaurant kitchens. When he returned to school, he studied journalism and covered criminal justice at a daily newspaper in Wyoming. His willingness to work hard and his attitude of service should be partially attributable to his prior experience.

It is in journalism that Shane developed the deep interest in the law that he demonstrated in my class. He also began developing an understanding of the real-world implications of legal work. While working in news he published multiple articles detailing instances of police use of force and investigative techniques after which agencies terminated employment of the officers involved. I think this background will equip him to help you in navigating the difficult and weighty questions posed to members of the judiciary.

Finally, Shane prepared an excellent paper this fall in which he argued that people with felony convictions should be allowed to sit on civil and criminal matters that arise from the prison setting. I think he is the first to write on this novel idea, and his paper was able to break complex ideas in easy-to-read paragraphs. Again, I think his journalism pedigree would be an asset to your chambers.

Shane is also a delight to be around. I am confident that you and your chamber would enjoy working with him and that he will be an excellent clerk. If you have any further questions that I can answer about Shane, please do not hesitate to ask.

Sincerely,

Shon Hopwood

Shon Hopwood - srh90@georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in support of Shane Sanderson's application to be your law clerk. Shane was a student in my Federal Courts and the Federal System class in fall of 2022. This is a notoriously difficult course, and it is generally taken by the top students at Georgetown, including all of those who plan to apply for a judicial clerkship. Even in this company, Shane was a standout student. I generally assign a panel of students to be "on call" for each class. Shane always gave on point and insightful answers when I called on him. But, more importantly, he went above and beyond, making valuable contributions to class discussions even when he was not on call. It was clear from his class participation that he had mastered the difficult, often abstruse doctrines in this field. He also often stayed after class to continue discussing the Federal Courts issues we had covered in class. These conversations, as well as conversations during my office hours, showed that, in addition to being very bright and well-spoken, Shane is intellectually curious and sincerely interested in the issues on which he would be working as your clerk.

In light of his class performance, I was not surprised, after grading the exams blindly, to find that he had written one of the top-scoring exams. The exam I gave that year was, in retrospect, an extremely difficult one. Most students missed a lot of the main issues. Shane's exam was exceptional in that he caught all of the major issues and examined them succinctly and insightfully. The exam was well-written, well-organized, and well analyzed, and it confirmed his mastery of the subject matter of the course. I gave him a well-deserved A in the course.

During our conversations after class and during office hours, I also found him to be a delightful person. I am confident he would get along well with you and with his peers. He had a pre-law school career in journalism covering legal matters, which prepared him well for law school. Shane also conveys a higher degree of maturity than the average law student.

In sum, I recommend Shane to you enthusiastically. I have no doubt that he would make an excellent law clerk.

Please do not hesitate to contact me if you would like to discuss Shane's qualifications further.

Sincerely yours,

Carlos M. Vazquez

Carlos Vzquez - vazquez@georgetown.edu

FEDERAL PUBLIC DEFENDER
DISTRICT OF COLUMBIA
SUITE 550
625 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20004

A.J. KRAMER
Federal Public Defender

TONY AXAM, JR.
Assistant Federal Public Defender

Telephone (202) 208-7500
FAX (202) 208-7515
tony_axam@fd.og

May 5, 2022

Dear Judge,

I am writing to provide my highest recommendation for Shane Sanderson who worked in my office as a legal intern over the past school year. He is intelligent, hardworking, and deeply motivated by the promise of justice. I have no doubt that he will make an excellent law clerk, and eventually, an outstanding attorney.

Shane came to the Office of the Federal Public Defender in the early fall of 2021 and immediately became a sought-after intern amongst the attorneys. His work with me involved research for cases on appeal in the D.C. Circuit. Obviously, his time as a reporter served him well as he was able to return assignments to me quickly with appropriate brevity and depth of analysis. He was the rare law student capable of understanding the broader implications of legal issues while successfully articulating their importance in the case immediately before the court.

I appreciated that Shane listened carefully and had the ability to understand the procedural and substantive doctrines that guide our work. He was able to accurately describe circuit splits for certiorari petitions and assist with evaluating issues of attorney ineffectiveness in post-conviction proceedings. When providing him assignments, I sometimes thought they were beyond the reach of a second-year law student. He repeatedly proved me wrong.

This spring, Shane assisted me with novel a Sixth Amendment jury cross-section challenge. Thanks in no small part to his extensive record review and legal research, our office inspired modifications to the District Court's jury selection plan. I like to think this effort will help ensure greater realization of our clients' rights to juries made up of fair cross-sections of the community.

I am pleased that I had the chance to supervise Shane and to get to know him personally. I look forward to watching him develop as a lawyer. Please contact me directly if you would like to further discuss my impressions of him.

Sincerely,

Tony Axam, Jr.
Assistant Federal Public Defender

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Shane Sanderson, a current 3L student at Georgetown University Law Center, for a clerkship position in your chambers. My recommendation and my knowledge of Mr. Sanderson's legal skills are based on the following: his impressive performance in my Advanced Evidence Seminar (in Spring 2022); a law review article that he is drafting; and his impressive performance thus far in my Law & Neuroscience seminar this semester (Spring 2023).

Mr. Sanderson was student in my Advanced Evidence Seminar during the last academic year. The seminar of 21 students focused on complex issues involving the law of evidence, with a particular focus on criminal cases. The work for the course consisted of two components: (1) class discussion of assigned topics and readings, and (2) an independent research paper. Mr. Sanderson excelled at both aspects and received a grade of "A" for the course. On the first component (class discussion and participation), the topics included advanced issues concerning admissibility rules (such as character, experts, and privileges) as well as several constitutional issues and issues involving burdens of proof and presumptions. Mr. Sanderson made many positive contributions to our class discussions, engaging regularly with me and his classmates on the issues. His contributions displayed a sophisticated and nuanced understanding of evidence doctrine as well as an appreciation of the larger legal context, including practical and policy considerations. He also regularly connected the evidentiary issues being discussed to other legal issues involving, for example, criminal justice and criminal procedure.

Mr. Sanderson's research paper was also equally impressive. The paper argues for an increased role for juries at criminal sentencing by connecting the sentencing issue to legal doctrine and scholarship on the distinction between "questions of law" and "questions of fact." The paper, in my opinion, creatively and effectively brings together three complex issues: (1) the abstract and theoretical academic scholarship on the law-fact distinction; (2) the Apprendi line of Supreme Court jurisprudence on sentencing; and (3) practical issues related to sentencing. The paper argues that, under existing academic models for distinguishing legal from factual questions, the question of an appropriate criminal sentence appears to fall on the "fact" (as opposed to the "law") side of the line, thus suggesting an increased role for juries as with other "factual" questions. In addition to its substance, the paper overall displayed several admirable qualities. These include the depth and quality of the research (both caselaw and scholarship), the clarity of the analysis and overall presentation, as well as a nuanced discussion of counterarguments and limitations of the paper's analysis.

After the class, Mr. Sanderson decided to expand his seminar paper into a full-length law review article. After conducting significant additional research, and seeking additional feedback on his drafts, Mt Sanderson expanded the initial draft into a 25,000 word manuscript that he is now in the process of submitting to law reviews for publication. As with his original paper, I was impressed with the depth and breadth of his additional research, and with his ability to bring together a number of distinct issues in arguing for an increased role for juries in criminal sentencing.

This semester, Mr. Sanderson is a student in my Law & Neuroscience Seminar. The seminar explores a number of cutting-edge issues involving the use of neuroscience in legal settings, including, for example, death-penalty and juveniles cases on the criminal side and proving injury and pain on the civil side. The class discussions also involve several complex evidentiary issues involving different types of expert testimony. As in the Advanced Evidence Seminar, Mr. Sanderson has made many positive contributions to the class thus far. He also continues to display an impressive understanding of the complex evidentiary issues and an appreciation of the important practical and policy considerations underlying evidence doctrine.

Based on his performances is my courses, I believe that Mr. Sanderson would be an excellent law clerk. I would be happy to discuss his application further. The best way to reach me is via email at michael.pardo@georgetown.edu .

Sincerely,

Michael S. Pardo
Professor of Law
Georgetown University Law Center

SHANE SANDERSON
329 Elm St. NW, Washington, DC 20001 • (573) 355-2979 • ss4436@georgetown.edu

WRITING SAMPLE

The attached writing sample is the paper that I submitted in Spring 2023 for Criminal Procedure and the Roberts Court, a seminar taught by Prof. Irv Gornstein and Judge Pamela Harris. Prior to drafting the paper, I discussed my theory of the case with Prof. Gornstein during an approximately 20-minute conversation. All other work on this writing sample was my own.

Shane Sanderson

BENCH MEMORANDUM

ADAM SAMIA V. UNITED STATES OF AMERICA, NO. 22-196

INTRODUCTION

The issue for the Court to determine is whether admission of a codefendant's redacted out-of-court confession that is nonetheless immediately inculpatory due to the surrounding context and not subject to cross examination violates the defendant's rights under the Confrontation Clause of the Sixth Amendment.

The district court determined that the confession as redacted was facially non-inculpatory and thus not violative of the Confrontation Clause. The district court's determination and the circuit court's affirmation, however, too narrowly read the Court's precedent construing the Confrontation Clause. Because its caselaw requires courts to look to non-evidentiary information available to the jury and outside the four corners of the statement, the Court should reverse the defendant's conviction and remand for a new trial with application of the appropriate rule.

KEY FACTS

Petitioner is Adam Samia, who in early 2012 traveled to the Philippines to work as a contract killer for a multinational criminal enterprise. Resp't's Br. 3. Months later, authorities in the Philippines found Catherine Lee, a local real-estate agent, dead from close-range gunshot wounds. *Id.* Law enforcement later arrested confessing codefendant Carl David Stillwell and petitioner, among others, in connection with her death. *Id.* Mr. Stillwell waived his *Miranda* rights following his arrest. *Id.* He confessed to involvement in Ms. Lee's murder and identified petitioner as the shooter. Pet'r's Br. 8.

A federal grand jury indicted petitioner, Mr. Stillwell, and another codefendant of: conspiracy to commit murder for hire; murder for hire; conspiracy to kidnap and murder in a

foreign country; and using or carrying a firearm during and in relation to murder. Resp't's Br. 4. The indictment also charged petitioner and Mr. Stillwell of conspiracy to money laundering. *Id.*

On a government pretrial motion *in limine*, the trial court ruled admissible only against Stillwell a redacted version of the confession. *Id.* At the joint trial, the confession came in through the DEA agent who had interviewed Mr. Stillwell. *Id.*, 6. Because Mr. Stillwell was accused of conspiracy, the statement included reference to a co-conspirator. *Id.* It was modified, though, consistent with the trial court's order, to remove the petitioner's name. *Id.* The agent testified:

> Q. During your interview, did you ever ask Mr. Stillwell whether he had ever been out of the country?
> A. Yes.
> Q. What did he say?
> A. He said he had been overseas once.
> Q. Did he indicate where he had gone?
> A. The Philippines.
> …
> Q. Did Mr. Stillwell indicate whether he had gone alone or with someone else?
> A. He stated that he had met somebody else over there.
> Q. Did he describe where he and the person that he met over there stayed while in the Philippines?
> A. Yes, he explained that he and the other person initially stayed at a hotel, but then moved to what he described as a condo or apartment-type complex in the old capital area of the city.
> Q: And he stated that they lived together?
> A: Yes.
> Q: Stayed in the same place?
> A: Yes.
> Q: To his knowledge, did the person that he was with in the Philippines ever carry a firearm?
> A: Yes.
> Q: Did he describe what kind of firearm it was?
> A: He described it as a full-size, four-inch gun of some nature, but could not recall whether it was a nine millimeter, .22, or .45 caliber.
> Q: Did he notice any other features of the firearm?
> A: Yeah, he recalled that it had a threaded barrel.
> …
> Q. Was there a particular occasion that he remembered that individual having that gun in their possession?

> A. Yes.
> Q. When was that?
> A. He described a time when he and that other individual had traveled outside of Manila to view a property and that he had observed a gun then.
> Q. And at any point during the interview did you ask him about the murder of Catherine Lee?
> A. Yes.
> …
> Q. What did he say about it?
> A. He stated, "I did not kill anybody gentlemen but I was there and things I may have done led to that."
> Q. Did he say where she was when she was killed?
> A. Yes. He described a time when the other person he was with pulled the trigger on that woman in a van that he and Mr. Stillwell was driving.

J.A. 74–77. *See also*, Resp't's Br. 6–8, Pet'r's Br. 9–11.

During the DEA agent's testimony, the district court instructed the jury that the confession was admissible only as to Mr. Stillwell and not against petitioner and the third codefendant. Resp't's Br. 8. The court again instructed the jury before deliberations. *Id.*

Petitioner testified and denied involvement with the murder. *Id.*, 12. His codefendants both exercised their Fifth Amendment right and did not testify at trial. *Id.* The jury convicted all three defendants on all counts. *Id.* The court sentenced petitioner to life imprisonment. *Id.*

Before the U.S. Court of Appeals for the Second Circuit, petitioner argued that the evidentiary context of the confession would cause jurors to immediately infer that petitioner was the "another person" referred to in the confession. Pet'r's Br. 13. The circuit court looked to its precedent which required considering the statement "separate and apart from any other evidence admitted at trial." *Id.* (quoting court of appeals opinion). The Second Circuit denied the Confrontation Clause claim and affirmed petitioner's conviction. Resp't's Br. 12.

This Court on December 13, 2022, granted the petition for a writ of certiorari in this matter. *Id.*, 1. The parties completed briefing of the case on March 17, 2023. See Pet'r's Reply

Br. 1. The Court on March 29 held oral argument and the parties submitted the case. The matter is now awaiting the Court's determination.

LEGAL ANALYSIS

The Court should hold that admission of Mr. Stillwell's confession in a joint trial of Mr. Stillwell and petitioner violated petitioner's Confrontation Clause right under the Sixth Amendment. Precedent of this Court makes clear that a confession is facially incriminating and thus inadmissible in a joint trial where there is a high risk that the jury will make an immediate inference that the defendant is accused by the statement independent of evidence introduced at trial. This rule holds regardless of whether the statement has been redacted and even if a limiting instruction has been issued to the jury.

In determining whether this rule has been violated, the trial court should look to the same non-evidentiary sources of information that would be available to jurors presented with the confession at issue. Trial courts should thus consider the four corners of the confession itself; information that would typically appear in a case caption or indictment, such as a person's name, their nickname, or the number of people involved in the crime; and information that would be otherwise apparent to jurors independent of the evidentiary presentation at trial, such as the physical appearance of the defendant in the courtroom.

Because the district court below considered only the first of these three sources of information, its analysis was incomplete. The record before the Court indicates that information available to jurors in the courtroom would be sufficient for the jury to make the immediate inference that the petitioner was the "[]other person" referenced in the confession. Because Mr. Stillwell declined to testify, petitioner did not have opportunity to cross-examine his accuser. The particularly dangerous nature of such an accusation could not be cured by a mere jury

instruction. For those reasons, the Court should determine that petitioner is entitled to a new trial in which his Confrontation Clause right is not violated.

This memorandum will begin by reviewing the relevant precedent cases and the categorical nature of their reasoning. It will go on to illustrate how those cases establish the rule set out above and demonstrate how the parties' proposed rules diverge from that precedent. It will continue by unpacking the practical policy considerations motivating the precedent cases and demonstrating how the parties' proposed rules fail to honor those interests. It then will distinguish the circumstances of this case from those in another area of constitutional jurisprudence that does allow for admission of party confessions with a limiting instruction. Finally, it will apply the rule established to the facts of the present case to determine that the Court should vacate the petitioner's conviction.

I. The precedent cases create a general rule pertaining to risk of jury disregard of a limiting instruction regarding an inculpatory co-defendant confession.

The Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. The Confrontation Clause will generally guarantee a criminal defendant the opportunity to cross-examine a witness providing testimony against him. *See* Crawford v. Washington, 541 U.S. 36, 68 (2004). Observance of this right can be a procedural challenge when the witness is unavailable.

Where (as here), a person has provided a confession and the government proceeds to joint trial against him and at least one other person, a Confrontation Clause issue may arise. The confessing co-defendant may claim his Fifth Amendment right against compelled self-incrimination and thus render himself unavailable. The non-confessing defendant will be unable to cross examine him. Were the confession to contain *testimony against* the non-confessing

defendant, introduction of the confession would implicate the Confrontation Clause right of the non-confessing defendant. At one point, the Court did allow for jury instructions to cure the issue. That has changed.

The Court's modern jurisprudence on this issue begins with *Bruton v. United States*, 391 U.S. 123 (1968). At trial, the government introduced a pre-trial confession made by co-defendant Evans to a postal inspector. *Id.*, 124. Mr. Evans, during the course of the confession, named Mr. Bruton as his accomplice in an armed robbery. *Id.* Mr. Evans declined to testify, and the law enforcement agent read the confession—containing Mr. Bruton's name—into the record. *Id.* The trial court instructed jurors to disregard the confession as to Mr. Bruton. *Id.*, 125, n.2. The jury convicted Mr. Bruton. *Id.*, 124–25. The Court held that the jury instruction did not suffice to prevent a violation of the Confrontation Clause. *Id.*, 126.

The Court wrote: "[B]ecause of the substantial risk that the jury, despite instructions to the contrary, looked to the incriminating extrajudicial statements in determining petitioner's guilt, admission of [the co-defendant's] confession in this joint trial violated petitioner's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment." *Id.*

The Court has twice since interpreted *Bruton*'s central holding. In *Richardson v. Marsh*, 481 U.S. 200 (1987), the Court considered a co-defendant confession that did not name the petitioning defendant. There, co-defendant Williams admitted to an assault and murder stemming from a robbery. *Id.*, 203–04. In the course of the confession Mr. Williams implicated Ms. Marsh. *Id.* Seeking to satisfy *Bruton*, the government redacted the confession to omit reference to Ms. Marsh. *Id.*, 203. The confession as admitted into evidence included description of a conversation in a car during which Mr. Williams and a third person, Mr. Martin, plotted the robbery on their way to the crime scene. *Id.*, 203 n.1. Because Mr. Martin died before trial, his name was not

redacted from the confession. Mr. Williams did not testify at trial. *Id.*, 204. Ms. Marsh, however, took the stand. *Id.* She stated that she was in the car on the way to the crime scene, but that she did not hear the robbery plan because the car's radio drowned out the conversation. *Id.*

The Court held that the *Bruton* rule had not been violated. *Id.*, 207. The Court held: "while it may not always be simple for the members of a jury to obey the instruction that they disregard an incriminating inference, there does not exist the overwhelming probability of their inability to do so that is the foundation of *Bruton*'s exception to the general rule [that jurors are presumed to follow instructions]." *Id.*, 208.

In the final of the trio, *Gray v. Maryland*, 523 U.S. 185 (1998), the confession read into evidence was likewise redacted. The government put the confession into evidence through a Baltimore City Police Officer. *Id.*, 188. When the detective read the confession at trial, he said the word "deleted" or "deletion" in place of the petitioner's name. *Id.* The written confession introduced into evidence left blank spaces where the petitioner's name would appear. *Id.*, 189. The trial judge instructed the jury that the confession was not evidence against the petitioner and could only be used against the confessing co-defendant. *Id.* The Court found *Bruton* applicable. *Id.*, 192. It held: "[W]e believe that, considered as a class, redactions that replace a proper name with an obvious blank, the word 'delete,' a symbol, or similarly notify the jury that a name has been deleted are similar enough to Bruton's unredacted confessions as to warrant the same legal results." *Id.*, 195.

Notably, in all of its precedent cases, the Court wrote in generalities. In *Bruton*, the Court did not make a finding that the jury did (or would have) in fact improperly considered the confession. It held that the "substantial risk" of the jury disobeying a limiting instruction created the Confrontation Clause violation. In *Richardson*, the Court reasoned that an "overwhelming

probability" of instruction disregard did not exist and thus the Confrontation Clause had not been violated. And in *Gray*, the Court considered statements "as a class" that would violate the rule.

The precedent's generalist reasoning is sensible given the difficulty of inquiry inherent to the type of issue at hand. The Court must deal in "likelihood[s]" of jury reasoning—*see Bruton*, 391 U.S. 127—for two reasons. First, jury deliberations are closed. There cannot be perfect post-conviction information about the jury's reasoning process without deep inquiry into the conversations that occurred in the black box of the jury room. Because such inquiry is generally disfavored, the doctrine must draw its line based on what *likely* did (or will) happen, rather than attempt to determine what did (or will) happen in deliberations. *See Bruton*, 391 U.S. 126 ("*If it were true* that the jury disregarded the reference to the codefendant, no question would arise under the Confrontation Clause, because *by hypothesis* the case is treated as if the confessor made no statement inculpating the nonconfessor." (emphasis added)).

Second, jurors may not have perfect insight into their reasoning. Even an earnest juror seeking to apply the trial court's instruction appropriately may fail to do so. It is possible a juror would shade their determinations subconsciously. In such a case—setting aside the judiciary's reticence to inquire into juror reasoning—the juror might state that they did not consider the confession, despite the fact that it had improperly influenced their verdict.

The precedent concerns itself with drawing bright lines that result in generally applicable rules rather than fact-specific determinations applicable only to specific cases. The Court should carry forward this jurisprudential logic in the present matter. And, although the language of precedent cases shifts somewhat, it is not necessary for the Court to become overly concerned with selection of language between *Bruton*'s "substantial risk" and *Richardson*'s "overwhelming

probability." This is because the boundaries and intended effects of the general rule are clear and consistent when considering the three opinions in juxtaposition.

II. The *Bruton-Richardson-Gray* line of cases draws its line at "inferentially incriminating" testimony, which requires additional trial evidence to inculpate.

The essential distinction in the *Bruton* line of cases is the line between facially incriminatory and inferentially incriminatory evidence. The Court first established this distinction in *Richardson*. When it distinguished the facts of that case from *Bruton*, it reasoned that the confession before it "was not incriminating on its face, and became so *only when linked with evidence introduced later at trial*." *Richardson*, 481 U.S. 208 (emphasis added). The Court explained: "[W]hile it may not always be simple for the members of a jury to obey the instruction that they disregard an incriminating inference, there does not exist the overwhelming probability of their inability to do so that is the foundation of *Bruton*'s exception to the general rule." *Id.*

The Court in *Gray* further clarified this distinction. It stated:

> We also concede that the jury must use inference to connect the statement in this redacted confession with the defendant. But inference pure and simple cannot make the critical difference, for if it did, then *Richardson* would also place outside *Bruton*'s scope confessions that use shortened first names, nicknames, descriptions as unique as the "red-haired, bearded, one-eyed man-with-a limp," and perhaps even full names of defendants who are always known by a nickname. This Court has assumed, however, that nicknames and specific descriptions fall inside, not outside, *Bruton*'s protection.
> …
> The inferences at issue here involve statements that, despite redaction, obviously refer directly to someone, often obviously the defendant, and which *involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial*.

Gray, 523 U.S. 195 (internal citations omitted) (quoting United States v. Grinnell Corp., 384 U.S. 563, 591 (1966) (Fortas, J., dissenting)) (emphasis added).

The dissent in *Gray* characterized the line similarly: "By 'facially incriminating,' we have meant incriminating *independent of other evidence introduced at trial*. Since the defendant's

appearance at counsel table is not evidence, the description 'redhaired, bearded, one-eyed man-with-a-limp,' would be facially incriminating." 523 U.S. 201 (Scalia, J., dissenting) (emphasis added) (internal citations omitted) (quoting *Richardson*, 481 U.S. 208–09; *Gray*, 523 U.S. 195).

The Court in *Richardson* thus drew the line for *Bruton* applicability as turning on the necessity of a linkage with trial evidence. And the Court in *Gray* identified the line as resting upon "inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial." The dissent's characterization—"incriminating independent of other evidence introduced at trial"—makes precisely the same point (though perhaps more succinctly). The majority in *Richardson* and all nine justices in *Gray* were thus in agreement: if a confession is immediately incriminating independent of other trial evidence, *Bruton* applies.

The parties' briefing and arguments, in contrast, call for the Court to diverge from this clear line. The petitioner, unsurprisingly, reads the precedent broadly. By the petitioner's reading, the Bruton cases teach that "[t]he admission of a redacted confession violates a defendant's confrontation right where the jury is likely to infer that the confessing defendant named the nonconfessing defendant as an accomplice." Pet'r's Br. 15. He would have the Court incorporate "surrounding context of the trial" into its analysis. *Id.*, 14. The petitioner's analysis, in fact, calls for courts to consider the evidence introduced at trial, or—in a more modest proposal—the evidence the government would seek to introduce at trial. *See id.*, 32.

The petitioner is correct that a "true four-corners" approach to *Bruton* analysis of a redacted confession would be drastically underinclusive. *See* Pet'r's Br. 33–34. But for the Court to accept the petitioner's rule, it would need to discard a huge swath of its precedent. The petitioner's difficulty is that his call for "context" is really a call for evidence introduced at trial (or, alternatively, evidence the government indicates it will introduce at trial). The Court, though,

has repeatedly and explicitly stated that evidence introduced at trial is outside of *Bruton*'s scope. Because of the destabilizing risks inherent in drastic and sudden derogation of precedent caselaw, the Court should decline to adopt the line proposed by the petitioner.

The respondent's proposed line, though more modest than petitioner's, also misses the mark. The United States proposes a line that is drawn closely around the three precedent cases. *See* Resp't's Br. 13 ("[Precedent] singles out a particular type of statement deemed so inflammatory that a jury should not see it even with a limiting instruction: namely, a codefendant's out-of-court confession that facially implicates the defendant by directly naming him, using an equivalently personalized descriptor, or including an explicit and obvious redaction."). Although this rule accounts for the facts of the precedent, it does no more. The difficulty with the United States position is that it accounts for the evidentiary/non-evidentiary inferential line by treating it as apparent dicta. *See id.*, 26 (comparing the facts of the present case to those each of *Bruton*, *Richardson*, and *Gray*). But confining the precedent cases to their facts would erase the caselaw's neat and clearly explicated line. Under the respondent's rule, the non-confessing defendant would have no recourse against an inference easily drawn from a source of knowledge or intuition that does not fall within one of the three proposed buckets.

Such erasure would create a windfall for prosecuting attorneys and degrade the coherence of the law. It would sacrifice the Confrontation Clause's substance for a test of only technical significance. The Court should decline to adopt the respondent's proposed line. Instead, it should honor its precedent and apply *Bruton* to all co-defendant confessions that create substantial risk of immediately inculpating non-confessing defendants based on inferences not derived from trial evidence.

III. "Practical effects" illustrate the appropriate application of the *Bruton* rule.

Although the precedent's line is formally clean, it is also pragmatic. The Court has explicitly grounded its determinations on a set of practical policy considerations. The primary considerations appearing in the precedent are: avoiding unconfronted incrimination of the non-confessing defendant; limiting expenditure of resources necessary to apply the rule; preserving joint trials where appropriate; creating a predictable regime for litigants; and upholding the jury's truth-seeking role.

The rule's efficacy in protecting the non-confessing codefendant is central to precedential reasoning. In *Bruton*, the Court noted concern that "introduction of Evans' confession added substantial, perhaps even critical, weight to the Government's case in a form not subject to cross examination." 391 U.S. 127–28. The Court acknowledged the general presumption that jurors will follow their instructions but elaborated on its rule's central animating consideration. "[T]here are some contexts in which the risk that the jury will not, or cannot follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." *Id.*, 135. *See also*, *Richardson*, 481 U.S. 208 ("[A]t the time that confession was introduced there was not the slightest doubt that it would prove 'powerfully incriminating.'" (quoting *Bruton*, 391 U.S. 135)); *Gray*, 523 U.S. 193 ("To replace the words 'Sam Jones' with an obvious blank will not likely fool anyone.").

Jurors receiving an accusation against the "red-haired, bearded, one-eyed man-with-a limp" sitting at counsel table could not be expected to disregard the transcendent knowledge of an inference that needing no evidence in its support. In contrast, because inferentially incriminating confessions would require jurors to "enter[] onto the path of inference" before coming to a conclusion adverse to the defendant, *see Richardson*, 481 U.S. 208, a jury

instruction is sufficiently effective. Where jurors would need to proactively piece together the implications of various pieces of evidence admitted into evidence, the risk is much reduced. Jurors might heed the instruction before beginning the cognitive trip down the inferential path available to them.

The precedent is also concerned with the expenditure of resources used to resolve Confrontation Clause problems. This concern has been with the Court since *Bruton*. There, the Court acknowledged that joint trials "conserve state funds, diminish inconvenience … , and avoid delays." 391 U.S. 134. The Court in *Richardson* additionally explained that an extensive pretrial hearing would be "time consuming." 481 U.S. 209. The interest is not absolute, however. In *Bruton*, the Court balanced efficiency against "fundamental principles of constitutional liberty" protected by the Confrontation Clause and found the fundamental principles won out. 391 U.S. 134 (quoting People v. Fisher, 249 N.Y. 419, 432 (1928) (Lehman, J., dissenting)).

There is also interest in joint trials beyond judicial efficiency and preservation of resources. Joint trials ensure that the government is not required to put its case on multiple times; victims need not repeatedly testify and be subjected to inconvenience and—sometimes—additional trauma; and that principles of fairness are supported by joint trials. *Richardson*, 481 U.S. 210. Where a joint trial is unavailable, later-tried defendants have a better understanding of how the government plans to prevent its case. *Id.* And, without joint trials, there is a greater risk of inconsistent verdicts creating "scandal and inequity." *Id.*

The precedent is also concerned with drawing clean lines. *See supra*, Part I. This interest reinforces the aforementioned interest in conservation of judicial resources. Where the line is cleanly and predictably applied, courts are more likely to apply it appropriately and accurately. A

clear line should thus ensure less judicial resources are expended litigating *Bruton* issues during the trial stage and on appeal. *See Richardson*, 481 U.S. 209. *See also*, *Gray* 523 U.S. 197.

Finally, the precedent cases are interested in ensuring that the truth-seeking function of the courts is appropriately honored. Co-defendant confessions are highly prejudicial but questionably probative. *See Bruton*, 391 U.S. 136. The confessing co-defendant has too great an interest in shifting the blame for their conduct to be reliable without facing the crucible of cross examination. *See id.* Thus, the Confrontation Clause's protection ensures accurate fact finding.

The parties' proposed rules honor the interests identified by precedent to varying degrees. The petitioner's rule, unsurprisingly, would ensure that the non-confessing defendant will have their Confrontation Clause right fully vindicated. The same cannot be said for the rule proposed by the respondent. Under the respondent's reading of precedent, implication of the defendant is only prohibited if by name, description, or "explicit and obvious redaction." Were the Court to adopt the respondent's rule, it would rip the heart from the Confrontation Clause, at least for that subset of cases (including Mr. Samia's prosecution) that do not fall neatly into the three categories proposed by the respondent. Failure to appropriately account for this interest counsels strongly against adoption of the respondent's rule.

The interest in appropriate limitation on resource expenditure, meanwhile, goes unmet by the petitioner's proposed rule. It is true that the parties and their *amici* have significantly disputed the extent to which a more- or less-inclusive rule would burden trial courts. Disappointingly, the briefing and arguments do not clarify the empirical question of impact on trial court resources. The petitioner has rightly argued that the government should be assigned the burden of demonstrating any difficulties of administrability that would flow from an overly inclusive rule. Transcript of Oral Argument, at 107. And the respondent's evidence on that issue ultimately

amounts to a case anecdote—*see id.*, 96—and a lengthy list of state executives that oppose the petitioner's rule. *See id.*, 95–97; *see also*, Amici Curiae Br. for Pennsylvania, Alabama, et al. in Support of Resp't. Despite this minimal showing, it is probably enough to defeat the petitioner's proposed rule (at least as to this particular interest). The roomy "surrounding context" standard is not a standard at all. It would create potential for near-endless litigation of *Bruton* issues. And whether it took the form of a pre-trial hearing, a post-verdict motion, or a post-conviction appeal, it is precisely the danger with which the *Richardson* Court was concerned.

The respondent's rule does not suffer from this same flaw. Its categorical simplicity does indeed create a clean line. And, for the same reason, the respondent's rule would not create undue litigation. But it is not necessarily a virtue that the respondent's rule would ensure a multitude of joint trials. The Court in *Bruton*, after all, balanced the interest in joint trials against the protection of the confrontation clause right. And the *Richardson* Court concerned itself with "reasonable practical accommodation" of competing interests. The respondent's rule would accommodate the interests of efficiency and of joint trials. It would also damage other interests.

The more appropriate balance is struck by the rule enunciated in the case law and identified in this brief as limiting the court's review to non- evidentiary information likely available to jurors. That standard confines litigation of the actual *Bruton* question to a limited set of facts allowing trial court determinations on the pleadings. The simplicity of the test limits appeals and thus limits expenditure of undue resources on appeal. There are some joint trials necessitated by the categorical rule. But as *Bruton* itself acknowledged, there comes a time when the "fundamental principles of constitutional liberty must win out." All liberties identified in the Bill of Rights cut away at judicial efficiency to some degree. That is their purpose. After all, the Star Chamber was not criticized for its inefficiency.

It is to the truth-seeking function of the jury that we turn next. And it is here that the respondent's proposed standard truly falters. Because prosecuting attorneys would have the facial implication rule drawn only to three categories of confession—*see* Resp't's Br. 13—trial courts would be unable to consider, for instance, common knowledge or folk reasoning in their analysis of *Bruton* problems. The respondent's incomplete set of considerations would ensure unduly prejudicial information will be presented to jurors. Codefendants, eager to limit their culpability, would be allowed to accuse by any method but name, personalized description, and obvious redaction. And the defendant would have no opportunity to confront the confessor's self-interest. The respondent's rule falls short of appropriate deference to the jury's truth-seeking function.

In contrast, because the government generally retains the ability to try cases separately—despite additional expense and difficulty—the truth-seeking function of the jury trial is not damaged by the rule identified *supra*, Part II. This rule in fact enhances jury fact finding. Because the rule proposed cuts away the risk of admission of a highly prejudicial, only minimally probative codefendant confession, jurors might better weigh the evidence before them. If the confessing co-defendant is tried first, all the better: conclusion of their case would resolve the Fifth Amendment issue and they could be called to testify. The unredacted confession would be admissible against the non-confessing defendant and subject to cross examination.

Both the petitioner and the respondent have thus drawn their lines in manners failing to adequately protect the interests served by *Bruton* and its progeny. The Court should discard the petitioner's proposition of unmanageable scope. It should similarly decline to adopt the respondent's lumpy rule that would risk the jury's fact-finding capabilities and defendant's protections against unopposed accusation. Instead, the Court should hew carefully to precedent

and hold *Bruton* applicable where a confessing co-defendant implicates the defendant through a statement with a significant risk of immediate inculpation on a basis other than trial evidence.

IV. The *Miranda* impeachment cases deal with a different set of constitutional concerns than those present in the *Bruton* line of cases.

The respondent is correct that *Bruton*'s rule diverges from other areas of the law, in which jurors are trusted to follow limiting instructions. *See* Resp't's Br. 15. The most notably analogous of the respondent's citations for this point is *Harris v. New York*, 401 U.S. 222 (1971). There, the Court dealt with a defendant confession that was immediately inculpatory as to the defendant himself but that was substantively inadmissible under the *Miranda* doctrine. The Court held sufficient a jury instruction to consider the confession for impeachment only. *Harris*, 401 U.S. 223-224. This, on its face, seems "some oddity." *See* Transcript of Oral Argument, 20 (statement of Gorsuch, J.). But the *Bruton* context is distinguishable in two ways.

These distinguishments arise from the balance between the truth-seeking function of the jury and the value of the constitutional protection that the Court has struck in its Confrontation Clause cases. The first point deals with the truth-seeking function side of the equation. In *Bruton* the Court found that, because there were other routes to the truth available, it would be unnecessary to admit the confession and infringe the Confrontation Clause right. *See* 391 U.S. 134 ("Where viable alternatives do exist, it is deceptive to rely on the pursuit of truth to defend a clearly harmful practice."). The Court there indicated that redaction would be an appropriate route to the truth. In the present case, petitioner has persuasively argued that separate trials are an always present (though sometimes costly) alternative available to the trial court.

In contrast, the circumstances of *Harris* provide no such alternate route to the truth. There, the defendant had the right to testify in his own defense. 401 U.S. 225. He did so and testified in a manner inconsistent with his prior unwarned statement. *Id.*, 226. Importantly, in

those circumstances, counsel, the Court, the defendant—*everybody in the courtroom except the jurors*—would have been aware that the defendant's statement was disastrously unreliable. Additionally, there were no alternative routes to the truth available: the only cure was impeachment. And the only available impeachment testimony for that point was the confession at issue. Thus, the circumstances of *Harris* did not arise under the same balance of judicial interests elucidated in *Bruton* and present in the case now before the Court.

The second reason for distinguishment exists in the extent of the "clear harm" posed. *See Bruton*, 391 U.S. 134. *Bruton* is concerned with a principle of constitutional primacy. The Confrontation Clause appears explicitly in the text of the Bill of Rights. It is central to the protections against executive overreach in the private lives of citizens. *See Bruton*, 391 U.S. 134–35 (characterizing the right to cross examination as "the age-old rule which in the past has been regarded as a fundamental principle of our jurisprudence")(quoting People v. Fisher, 249 N.Y. 419, 432 (1928) (Lehman, J., dissenting)); *see also*, Hemphill v. New York, 142 S. Ct. 681, 690 (2022) ("One of the bedrock constitutional protections afforded to criminal defendants is the Confrontation Clause of the Sixth Amendment."). When considering petitions arising under *Bruton*, the Court is dealing with a fundamental constitutional protection.

In contrast, the rule addressed in *Harris* does not have the same primacy. The *Miranda* rule does not appear in the text of the Fifth Amendment. And the Court has acknowledged that a *Miranda* violation is a somewhat lower incursion into a person's rights than an outright violation of the Fifth Amendment. *See* Vega v. Tekoh, 597 U. S. ____, *4 (2022) (reasoning that a *Miranda* violation is not "tantamount to a violation of the Fifth Amendment"); *see also*, *id.*, *13 ("[A] violation of *Miranda* does not necessarily constitute a violation of the Constitution."). The same point can be made via the chain of constitutional principles implicated. In the

circumstances addressed by *Harris*, only *Miranda*'s safeguards were violated. The first-order principle, compulsion, was not itself violated. This, of course, is markedly distinct from *Bruton*, which dealt directly with the "bedrock constitutional protection" of the Confrontation Clause. Because in *Bruton* the truth-seeking interest is lower and the constitutional concern is greater than they are in *Harris*, the circumstances are readily distinguishable. It is thus sensible that the two lines of jurisprudence should diverge.

V. Application of the rule established above should result in a determination that the trial court erred by admitting the confession in a joint trial of the petitioner.

For the reasons outlined, the Court should adopt neither the petitioner's nor the respondent's proposed rule. Instead, the Court should adopt the rule derived from its precedent: where a nontestifying co-defendant's confession poses a high risk of immediately inculpating the defendant without the aid of additional trial evidence, the Confrontation Clause concern cannot be cured by a limiting instruction. In making *Bruton* determinations, courts should be empowered to consider: the four corners of the confession itself; information that would typically appear in a case caption or indictment, such as a person's name, their nickname, or the number of people involved in the crime; and any other information that would be otherwise apparent to jurors independent of the evidentiary presentation at trial, such as the physical appearance of the defendant in the courtroom, common sense intuitions, or popular knowledge.

Applying this rule to the case before the Court should result in a determination that the district court erred by admitting the confession in the joint trial of the petitioner and that the court of appeals erred in upholding the conviction. This is true for three reasons. First, the confession immediately inculpates "another person" whose identity can be determined by a glance at the case caption or the indictment. Second, the jury would be likely to intuit from common sense that the government charged the case consistent with its smoking-gun confession.

And, third, popular knowledge of police practice would allow jurors to discern that the law enforcement officer questioning Mr. Stillwell almost certainly asked follow up questions to determine the identity of the "[]other person" and evaluate the appropriateness of charging respondent in the manner reflected by the indictment.

CONCLUSION

The Court should thus hold that where a nontestifying co-defendant's confession poses a high risk of immediately inculpating the defendant without the aid of additional trial evidence, the Confrontation Clause issue cannot be resolved by a limiting instruction alone. In making *Bruton* determinations, courts should be empowered to consider: the four corners of the confession itself; information that would typically appear in a case caption or indictment, such as a person's name, their nickname, or the number of people involved in the crime; and any other information that would be otherwise apparent to jurors independent of the evidentiary presentation at trial, such as the physical appearance of the defendant in the courtroom, common sense intuitions, or popular knowledge. Application of that rule to the present case should result in a reversal of petitioner's conviction.

Applicant Details

First Name	**Ruth**
Last Name	**Sangree**
Citizenship Status	**U. S. Citizen**
Email Address	**rs6700@nyu.edu**
Address	**Address** **Street** **318 6th Street, Apt 9** **City** **Brooklyn** **State/Territory** **New York** **Zip** **11215** **Country** **United States**
Contact Phone Number	**917-993-4345**

Applicant Education

BA/BS From	**Mount Holyoke College**
Date of BA/BS	**May 2018**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 17, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Review of Law & Social Change**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Sack, Emily
ejs2163@nyu.edu
401-254-4603

Cox, Abbee
abbeecox@gmail.com
(580) 704-6865

Hakeem Jeffries, Debo Adegbile and
Debo.Adegbile@wilmerhale.com;hakeemjeffries@yahoo.com
212-295-6717 or 202-225-5936

Taylor-Thompson, Kim
kim.taylor.thompson@nyu.edu
(212) 998-6396

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year law student at New York University School of Law, where I am a Senior Articles Editor for the *Review of Law & Social Change*. I am applying for a clerkship in your chambers for the 2024-2025 term, and any subsequent term. I am particularly interested in clerking for you given my ties to Virginia, where my family still lives. As an aspiring civil rights litigator who thrives in dynamic workplaces, I believe I would make a valuable addition to your chambers.

Since coming to NYU Law, I have spent my time honing the legal research and writing abilities that I believe will make me an invaluable judicial clerk. During my 1L summer clerkship with the Orleans Public Defenders, I learned how to quickly draft successful motions and thoroughly review thousands of pages of discovery, summarizing them in comprehensive discovery digests. My work with the NYU-Yale American Indian Sovereignty Project allowed me to sharpen my substantive cite-checking skills as I helped prepare an amicus brief discussing the history of the trust doctrine in *Arizona v. Navajo Nation*, which is pending before the Supreme Court. Before law school, I worked for two years at the Brennan Center for Justice. As the Special Assistant to the Justice Program director, I learned how to write reports and speeches quickly yet adeptly, adapting my tone and style to best meet the needs of my employer. Lastly, my Fulbright Research Fellowship taught me how to manage projects without supervision and work with diverse constituents.

Enclosed please find my resume, law school transcript, and writing sample. Written recommendations will follow from:

- Congressman Hakeem Jeffries and Professor Debo Adegbile, with whom I took Professional Responsibility (debo.adegbile@wilmerhale.com and (212) 965-6717).
- Professor Kim Taylor-Thompson, Professor of Law Emerita at NYU School of Law, with whom I took Criminal Law (kim.taylor.thompson@nyu.edu and (914) 720-5827).
- Professor Emily Sack, Visiting Professor at NYU School of Law, with whom I took Domestic Violence Law (ejs2163@nyu.edu and (401) 359-4480).
- Ms. Abbee Cox, Staff Attorney at the Orleans Public Defenders and my 1L summer supervisor (abbeecox@gmail.com and (580) 704-6865).

Please let me know if I can provide any additional information. I can be reached by phone at (917) 993-4345, or by email at rs6700@nyu.edu. I would welcome the opportunity to interview with you and look forward to hearing from you soon.

Respectfully,

/s/

Ruth Sangree

RUTH SANGREE (she/her)
rs6700@nyu.edu • 917-993-4345 • 318 6th St, Apt. 9, Brooklyn NY 11215

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Candidate for J.D., May 2024
Honors: *Review of Law & Social Change*, Senior Articles Editor
Activities: Disability Rights and Justice Clinic, Student Advocate (Fall 2023)
OUTLaw, Public Interest Professional Development Chair
Defender Collective, Board Member

MOUNT HOLYOKE COLLEGE, South Hadley, MA
B.A., History and Politics, May 2018

EXPERIENCE

BROOKLYN DEFENDER SERVICES, Brooklyn, NY
Legal Intern, Integrated Defense Practice, June 2023 – August 2023
Interview clients, prepare client affidavits, draft motions, and research novel legal issues in family and criminal law. Help attorneys prepare for hearings by preparing witnesses, drafting direct and cross-examinations, and reviewing case records.

PROFESSOR KENJI YOSHINO, NYU SCHOOL OF LAW, New York, NY
Research Assistant, January 2023 – May 2023
Contributed to research-backed projects to advance the law school's efforts on diversity and inclusion.

NYU-YALE AMERICAN INDIAN SOVEREIGNTY PROJECT, New York, NY
Student Researcher, September 2022 – Present
Provide research and drafting support for amicus briefs relating to federal Indian law in cases before the Supreme Court.

PUBLIC JUSTICE, Washington, DC
General Litigation Extern, September 2022 – December 2022
Assisted with developing cases in federal courts focused on ending the criminalization of poverty. Authored a memorandum on challenges to court-imposed counsel fees via the Excessive Fines Clause. Drafted FOIA requests to federal agencies.

ORLEANS PUBLIC DEFENDERS, New Orleans, LA
Summer Law Clerk, May 2022 – August 2022
Drafted successful bond reduction and pretrial motions. Reviewed and summarized discovery documents and body camera footage. Assisted attorneys at arraignments and substantive motions hearings. Coordinated post-release services for clients in collaboration with the office's client services team. Interviewed and provided support to currently incarcerated clients. Organized a fundraiser for the office's client book fund.

NYU PAROLE ADVOCACY PROJECT, New York, NY
Parole Advocate, February 2022 – Present
Support clients as they prepare for appearances before the New York State Parole Board. Assemble Parole Packets, write advocacy letters, conduct mock interviews, and connect clients to re-entry services and appellate representation.

FULBRIGHT KOREA, Seoul, South Korea
Fulbright Research Scholar, February 2021 – December 2021
Conducted an independent research project on the South Korean "comfort women" (wartime sexual slavery) redress movement and its impact on broader South Korean feminist activism, vis-à-vis paths for legal recourse and restorative justice.

BRENNAN CENTER FOR JUSTICE, New York, NY
Special Assistant to the Director, Justice Program, June 2018 – July 2020
Provide research, drafting, and cite-checking support for major Program publications focused on criminal justice reform. Wrote daily briefings on national and local developments in criminal legal reform. Wrote speeches and prepared talking points for Director to use in national media appearances. Authored blogs and op-eds for the Center's website and external publications. Developed a dashboard tracking COVID-19's impact on incarcerated individuals.

ADDITIONAL INFORMATION

Conversational in Korean. Enjoy baking and hiking.

Name: **Ruth Sangree**
Print Date: **05/31/2023**
Student ID: **N10046319**
Institution ID: **002785**
Page: **1 of 1**

New York University
Beginning of School of Law Record

Fall 2020

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Shirley Lin			
Criminal Law	LAW-LW 11147	4.0	B
Instructor: Kim A Taylor-Thompson			
Torts	LAW-LW 11275	4.0	B
Instructor: Mark A Geistfeld			
Procedure	LAW-LW 11650	5.0	B
Instructor: Troy A McKenzie			
1L Reading Group	LAW-LW 12339	0.0	CR
Topic: Reading Legal News			
Instructor: Helen Hershkoff			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Edith Beerdsen			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B
Instructor: Samuel J Rascoff			
Contracts	LAW-LW 11672	4.0	B
Instructor: Clayton P Gillette			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Catherine M Sharkey			
Criminal Procedure: Police Practices	LAW-LW 12697	4.0	B
Instructor: Barry E Friedman			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Professional Responsibility and the Regulation of Lawyers	LAW-LW 11479	2.0	A
Instructor: Hakeem Sakou Jeffries Debo Patrick Adegbile			
Evidence	LAW-LW 11607	4.0	B
Instructor: Daniel J Capra			
Directed Research Option B	LAW-LW 12638	1.0	A
Instructor: Maggie Blackhawk			
Directed Research Option B	LAW-LW 12638	1.0	IP
Instructor: Helen Hershkoff			
Domestic Violence Law Seminar	LAW-LW 12718	2.0	A-
Instructor: Emily Joan Sack			
Reproductive Rights and Justice: A Comparative Perspective Seminar	LAW-LW 12768	2.0	A-
Instructor: Chao-ju Chen			

	AHRS	EHRS
Current	12.0	11.0
Cumulative	42.0	41.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Employment Law	LAW-LW 10259	4.0	B
Instructor: Cynthia L Estlund			
Racial Justice Colloquium	LAW-LW 10540	2.0	A
Instructor: Deborah Archer Vincent Southerland			
Examining Disability Rights and Centering Disability Justice	LAW-LW 10983	2.0	A
Instructor: Prianka Nair			
Constitutional Law	LAW-LW 11702	4.0	B+
Instructor: Peter Milo Shane			
Directed Research Option B	LAW-LW 12638	2.0	A
Instructor: Maggie Blackhawk			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	56.0	55.0

Staff Editor - Review of Law & Social Change 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	**All other JD and LLM (Non-Mandatory)**
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	***Maximum for A tier = 31%***
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	***Maximum grades above B = 57%***
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

Pomeroy Scholar:	Top ten students in the class after two semesters
Butler Scholar:	Top ten students in the class after four semesters
Florence Allen Scholar:	Top 10% of the class after four semesters
Robert McKay Scholar:	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

NYU | LAW

EMILY J. SACK
Adjunct Professor of Law

Professor of Law, Roger Williams University School of Law

NYU School of Law
40 Washington Square South
New York, NY 10012
P: 401 254 4603
ejs2163@nyu.edu

June 12, 2023

RE: Ruth Sangree, NYU Law '24

Your Honor:

I am writing to give my highest recommendation for Ruth Sangree, who is applying for a clerkship position in your chambers. I know Ruth well, and I am confident that she would make an excellent contribution to the work of the court.

I am a tenured full professor at Roger Williams University School of Law, and also serve as an adjunct professor of law at New York University School of Law. Ruth was a student in my Domestic Violence Law seminar at NYU this past fall. The seminar was small, and so I got to know the students and their work quite well. They were required to write a lengthy paper with original research. Ruth has a strong interest in American Indian Law, and her paper for my seminar focused on the impact of Violence Against Women Act provisions designed to address the limits of tribal jurisdiction over domestic violence crimes against Native American women.

I worked closely with Ruth on this paper, reviewing and meeting on various drafts. In a class of extremely strong students, Ruth stood out in several ways. First, she is a highly gifted writer, and I was struck by both the sophistication and clarity of her writing. She is also an excellent researcher. Part of the paper was devoted to the history of the Supreme Court's treatment of tribal criminal jurisdiction; though this is an area with which I am quite familiar, Ruth delved deeper into this history and provided the type of close and insightful readings of opinions that I had not seen before from a student. As you will note from her resume, Ruth was a Fulbright Junior Research Scholar in Korea where she conducted an independent research project on "comfort women." She clearly is experienced in critical analysis and is a top-notch researcher and writer. Further, Ruth brings a deep intellectual curiosity to her work and enjoys debating and discussing legal ideas. I saw this both in her active engagement in class discussion, as well as in her paper. After discussing the problems with limited tribal jurisdiction over domestic violence crimes and concluding that the VAWA provisions did not go far enough in addressing them, Ruth made several thoughtful proposals, emphasizing tribal sovereignty and the need for tribes to be able to reclaim jurisdiction over crimes committed on their land. These proposals were well researched, thoughtful, and original.

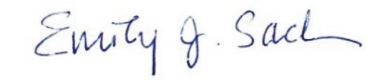
Ruth is committed to public service, and as you will see from her resume, she has held several public interest positions and internships. These include working at the Public Defender's Office in New Orleans last summer, and at Public Justice this past fall. This coming summer she will be interning at the Brooklyn Defenders. I am most familiar with her ongoing work with the NYU-Yale American Indian Sovereignty Project where she has been researching and drafting

various amicus briefs on relevant topics. In addition to her interest in criminal law and in tribal law and advocacy, I know that she has a strong interest in mental health and disability law; next year she will be a student advocate with the NYU's Disability Rights and Justice Clinic.

Ruth has been able to develop and utilize these exceptional research, writing, and analytical skills in additional academic and professional positions. She currently serves as Senior Articles Editor of the NYU Review of Law & Social Change, and prior to law school she worked as special assistant to the Director of the Brennan Center for Justice's Justice Program. In that position, she had a number of research and writing assignments, including a field project in El Paso, TX municipal courthouses on the impact of court-imposed fees and fines on litigants. For this project, she both collected quantitative data and conducted interviews with judges and court personnel.

In addition to her strong academic skills, Ruth has the confidence to engage with difficult legal and policy issues. I think all of her experiences, and particularly her Fulbright project and the field research at the Brennan Center, demonstrate Ruth's tenacity, initiative, and dedication to her work. As a former law clerk, I believe I have a good sense of the qualities that are critical to succeed in this position, and quite simply, Ruth possesses them all. Finally, Ruth is a mature and lovely person, who possesses the highest integrity and professionalism. She is truly a superlative candidate, and I hope that you will give her your closest consideration. I would be happy to provide any further information that would be helpful to you, and I can be reached at 401-254-4603 or ejs2163@nyu.edu. Thank you very much for your attention.

Sincerely,



Emily J. Sack
Adjunct Professor of Law
NYU School of Law
Professor of Law
Roger Williams University School of Law

ORLEANS PUBLIC DEFENDERS
2601 TULANE AVENUE – SUITE 700 • NEW ORLEANS, LA 70119
TELEPHONE: (504) 821-8101 • FAX: (504) 821-5285 • WWW.OPDLA.ORG

Dear Judge:

My name is Abbee Cox, and I'm a current public defender and former clerk. I clerked for the Honorable Pamela A. Harris of the U.S. Court of Appeals for the Fourth Circuit (2017 to 2018) and the Honorable Jon S. Tigar of the U.S. District Court for the Northern District of California (2018 to 2019), before joining the Orleans Public Defenders as a staff attorney in fall of 2019.

These experiences have given me insight into what one needs to succeed as a clerk, and especially as a clerk bound for a career serving the public interest. In light of this insight, I am humbled to have the opportunity to recommend Ruth Sangree for a clerkship in your chambers. Simply put, Ruth is a shining star, destined to become an incredible public interest lawyer. I am confident that she would be an invaluable addition to any workplace, and she is particularly well-suited to the challenges and opportunities presented by a federal judicial clerkship.

I got to know Ruth when she was assigned to work with me for her clerkship at the Orleans Public Defenders (OPD) in the summer of 2022. Generally, OPD assigns a pair of clerks to a pair of attorneys, so that the clerks get a diversity of assignments, as well as the opportunity to observe and learn from different advocacy styles. The unspoken rationale is to try to ensure that all lawyers get at least one clerk who will make their lives easier instead of harder. Because of course, some clerks are more helpful than others—some require a lot of hand-holding and re-writing to make it through even simple assignments, while others are able to hit the ground running and make real contributions to their attorneys' perpetually unmanageable workloads. In a resource-strained jurisdiction where caseloads far exceed ABA standards for indigent defense, a good clerk can make the difference between effective and ineffective assistance of counsel, at least for the few precious weeks that we are lucky to enough to benefit from their help.

Ruth Sangree was not only a "good" clerk, she was an *excellent* clerk. I was constantly bragging to colleagues about Ruth's impeccable work product, and other lawyers who had the opportunity to interact with her that summer — whether in trainings, small group practice sessions for trial advocacy skills, or simply in passing in the courthouse or break room — would tell me with no small amount of jealousy that I had "won the clerk lottery." In fact, Ruth developed such an excellent reputation around OPD that, on multiple occasions over her too-short tenure with us, other lawyers sought me out to see if they might be able to "borrow" her for a while. All too aware of the stack of assignments I had already loaded her down with, I would tentatively ask Ruth if she had bandwidth for anything else. She never hesitated to enthusiastically accept. By the end of her two and half months with us, whenever any of our lawyers found themselves in a jam, needing exceptional assistance on a tight turnaround (a frequent occurrence in our chaotic courthouse), they knew Ruth Sangree was the first person they should ask.

ORLEANS PUBLIC DEFENDERS

The range of work Ruth did for me mirrors the remarkable breadth of tasks public defenders must juggle. Some of these tasks require highly-attuned interpersonal skills, while others demand a sharp analytical mind and robust legal-research-and-writing chops. Ruth excelled in every one of these respects. Indeed, I struggle to think of any to-do on my constantly expanding list that I didn't feel Ruth could already do as well or better than me, as a lawyer with three years of practice under my belt. Ruth's influence has greatly improved my advocacy, even long after her departure. Though her capacity is seemingly endless, my space in this letter is limited. So, with apologies for the run-on sentence, a sample of Ruth's contributions: She visited and interviewed numerous incarcerated clients; drafted successful bond reduction motions that, against great odds, freed some of those clients; worked with OPD's client services division to connect folks with reentry services; created thorough and thoughtful investigation plans; reviewed hundreds of hours of body-cam footage and thousands of pages of discovery (summarizing them in discovery digests that were without a doubt the best I've ever seen—in equal parts comprehensive and concise); conducted creative and wide-ranging research on novel legal issues; and made insightful edits to substantive motions, including multiple successful motions to quash.

Somehow, Ruth also managed to find time to observe court on a near-daily basis. Then, in her "spare time," she organized her fellow clerks to put on a wildly successful fundraiser, raising over $5000 for OPD's client welfare fund. This allows attorneys to send hygiene items and books to our incarcerated clients, affording them a silver of dignity in a system hellbent on denying the same. I imagine that, with her characteristic humility, Ruth might describe this initiative as a group effort, and it undoubtedly was. But equally unquestionable is the fact that Ruth spearheaded it, and that it never would have happened without her unobtrusive, yet compelling leadership style. Ruth is the type of person who other, less capable peers might understandably feel some degree of envy around—but for the fact that she is every bit as kind, friendly, and down-to-earth as she is whip-smart and exceedingly competent. As Your Honor will no doubt observe if you get the chance to interview her, Ruth Sangree is a very difficult person to dislike.

During my tenure at OPD, I've supervised around ten law clerks, and as a clerk in the Harris and Tigar chambers, I worked closely with many college and law school interns—several of whom have gone on to secure full-time federal clerkships after graduation. Among this illustrious group, Ruth is without a doubt the best intern or clerk I have been lucky enough to supervise.

In sum, Ruth Sangree is more than equipped to thrive as a judicial clerk and member of the bar. Her future clients are exceedingly lucky, as is her future judge. I would have loved to have Ruth as a co-clerk, and I am thrilled to welcome her into the profession as a peer. I give her my highest recommendation. Should Your Honor have any questions, I am humbly at your service.

Sincerely,

Abbee B. Cox

Abbee B. Cox
(580) 704-6865 || abbeecox@gmail.com

Hakeem S. Jeffries
35 Underhill Ave.
Brooklyn, NY 11238
+1 917-974-3330
hakeemjeffries@yahoo.com

Debo P. Adegbile
7 World Trade Center
New York, NY 10007
+1 212 295 6717 (t)
Debo.Adegbile@wilmerhale.com

May 26, 2023

To whom it may concern:

We write to provide our highest recommendation for Ruth Sangree, who has applied to a judicial clerkship in your chambers. We had the privilege to teach Ruth last semester in a seminar titled *Lawyers and Leaders: Professional Responsibility in Government and Public Interest Lawyers*. Ruth's performance in the class was superb. She was a pleasure to teach, and we are confident she would be just as much of an asset to have in chambers.

In class, Ruth regularly made insightful and thought-provoking comments, and she showed a true passion for the subject. It is not every day that a student shows such engagement in a professional responsibility course. But she did. From the start, she showed that she was not only reading the materials but also giving serious thought to her own positions, reflecting on any preconceived notions that she might have had coming in. She was open-minded but also willing to take positions on what she thought was right. Her eagerness was matched by humility and a willingness to listen to others, to incorporate their views, and to consider how they might affect her thinking. It's not just that Ruth showed that she will make an excellent lawyer; it's also that she made the class more fun and generative. She was a joy to teach.

Given her consistent and excellent contributions throughout the semester, we were not surprised that her final paper—on the pitfalls and potentials of government attorneys engaging in zealous advocacy—was brilliant. Her argument—that the model rules of professional conduct are sometimes an odd fit with the specific requirements of the responsibilities of prosecutors and public defenders—was nuanced. As the paper made clear, she has a keen analytical mind. Her writing is also strong and clear. Ruth did not dodge some of the harder questions that her argument raised; instead she addressed them head-on, thoughtfully but forcefully.

Ruth's personal characteristics also speak to why you would benefit from her service as a clerk. It was clear her classmates were very fond of her. We expect that your other clerks would feel the same way. She is also up to the task of dealing with some of the hard questions she will confront over the course of her clerkship; throughout the semester, she showed that she was more than capable of thinking through tough, knotty questions.

In sum, Ruth's performance in our course speaks to why you should offer her a clerkship position. She's smart, and she combines her intelligence with an eagerness and a willingness to learn and to grow. She's also a strong writer, with a keen ability to communicate her arguments thoughtfully and effectively. Ruth will be an excellent clerk, and she will go on to do significant things in our profession.

Respectfully,

Hakeem Jeffries & Debo P. Adegbile

NYU | LAW

KIM A. TAYLOR-THOMPSON
Professor of Clinical Law

NYU School of Law
245 Sullivan Street, 627
New York, NY 10012
P: 212 998 6396
F: 212 995 4031
kim.taylor.thompson@nyu.edu

June 12, 2023

RE: Ruth Sangree, NYU Law '24

Your Honor:

It is with such pleasure that I write on behalf of Ruth Sangree, who has applied for a judicial clerkship. Ruth is one of those individuals whom you know has both the determination and passion to push boundaries and to make an impact in the profession. Her commitment to fairness and social justice forms the basis of all that she does. I have known Ruth since her first semester in law school. I found her to be curious, capable of seeing subtle connections. She was hard working and committed to excellence. I recommend her to you without hesitation.

Ruth offers the precise mix of talent and passion that one would expect from a first-rate young lawyer. I taught Criminal Law and it was everyone's first experience with online classes. Ruth's questions and insights during class demonstrated her eagerness to think deeply about critical questions. While many students are reluctant to speak up in their first semester, Ruth became one of the students I felt comfortable calling on because her answers and her questions routinely advanced and elevated the classroom discussion. She was an essential contributor in class discussions. I came to know Ruth well over that semester. I found that she not only enjoyed grappling with doctrine, but she also welcomed the opportunity to challenge conventional thinking and to question assumptions that she may have held when she entered law school. She quite comfortably and capably engaged with a wide range of materials that included cases, legal scholarship as well as interdisciplinary materials focused on social science and neuroscience. Even when the issues that we addressed had complex legal, social and political dimensions, she easily identified the key issues and carefully crafted arguments and positions that help to make sense of the complexity.

Ruth consistently brings clarity of thought to her work. She approaches her work with a high degree of care and creativity that gives you confidence that she will work hard to understand an issue and its nuances. When you challenge her to think hard about hard issues, she gives you the benefit of a sharp, critical mind. She not only excels in her ability to digest and grasp interdisciplinary materials, but she utilizes her analytical skills to raise probing questions. And, now, as a staff editor of NYU's Review of Law and Social Change journal, she has chosen to focus on legal issues that might contribute to questions of social justice.

Perhaps what sets Ruth apart is the time she spent abroad. After her first semester at the law school, Ruth opted to accept a Fulbright that gave her the opportunity to travel to Korea. This was a courageous choice – to interrupt her law school education, to leave the comfort of being part of a cohort of law students, to deepen her understanding of human rights more broadly. Her research project took a critical look at efforts to redress harms experienced by South Korean "comfort women." While she was conducting the research abroad, she stayed in contact with me and I loved watching the evolution of her thinking and insights. She not only began to understand both the cultural concerns and nuances, but she was also able to see parallels in the US. Ruth chooses to look at issues that others might be tempted to see as too tough, too intractable to tackle, and she rolls up his sleeves. She is a gifted student with an endlessly curious mind.

I hope that you will give her the opportunity to work with you and I am confident that you will find her work to be outstanding.

Sincerely,

Kim Taylor-Thompson

Kim A. Taylor-Thompson

WRITING SAMPLE COVER SHEET

The following memorandum was completed during my Fall 2022 externship with Public Justice. I have secured permission to use the memo as a writing sample, though some identifying information has been redacted. My supervisor reviewed an initial outline of the memorandum.

TO: Public Justice Supervisor

FROM: Ruth Sangree

DATE: November 29, 2022

RE: Applying the Excessive Fines Clause in a Juvenile Delinquency Context

1. Summary

You asked me to research if courts have applied the Excessive Fines Clause ("EFC") in juvenile delinquency proceedings, in Michigan or elsewhere. I could not find any relevant caselaw in Michigan or the Sixth Circuit that discusses the Excessive Fines Clause in juvenile delinquency proceedings, specifically. However, other jurisdictions, namely California and Alaska, have discussed the Excessive Fines Clause in a juvenile justice context. You also asked whether courts had applied the "fundamental fairness" test to the Excessive Fines Clause to determine whether the Excessive Fines Clause applies in juvenile court. I could not find caselaw that applied the "fundamental fairness" test to the Excessive Fines Clause in the juvenile context, specifically.

2. Excessive Fines Clause in the Michigan Context

a. The Michigan Constitution's Excessive Fines Clause

The Michigan Constitution has a provision that mirrors the federal Excessive Fines Clause. Section 16 of the Michigan Constitution states that "[e]xcessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained."[1] In *People v. Antolovich*, the Michigan Supreme Court laid out several factors for analyzing whether a law violates Section 16.[2] In *Antolovich*, the

[1] MI. CONST. art. I, § 16 (West).
[2] 207 Mich. App. 714, 717; 525 N.W.2d 513, 515 (1994) (articulating a test that weighed several factors, including: the object designed to be accomplished, the importance and magnitude of the public interest, the circumstances and nature of the act for which it is imposed, the preventive effect of a particular kind of crime, and, in some instances, the defendant's inability to pay).

court found that the trial court did not have the authority to impose court costs on the defendant.[3] The court declined to apply the federal Excessive Fines Clause, but found the fine in question excessive under the state constitution, after articulating a balancing test for analyzing the relevant state constitutional provision.[4]

In the past two decades, the Court of Appeals of Michigan has called *Antolovich* into question. In *People v. Lloyd*, the Court of Appeals of Michigan considered whether a defendant had received meaningful notice of an order requiring payment of attorney fees.[5] The defendant, citing *Antolovich*, argued that the trial court had lacked authority to impose court costs.[6] The court denied the defendant's claim, and said that the *Antolovich* decision would not govern over a plain-language analysis of MCL 769.1k and MCL 769.34(6), which expressly empowered sentencing courts to order defendants to pay court costs.[7] The court's reasoning largely rested on *People v. Dunbar*, in which the Court of Appeals of Michigan had held that consideration of a defendant's ability to pay does not require a specific formality, and that the sentencing court only needs to "provide a general statement of consideration regarding the [defendant's] ability to pay."[8] Notably, not long after *Lloyd* was announced, *Dunbar* was overruled in *People v. Jackson*.[9] Furthermore, in 2019, the Court of Appeals of Michigan stated that, regardless of *Lloyd*, they were still bound to follow the ruling in *Antolovich* and that, even if they weren't,

[3] *Id.* at 715
[4] *Id.* at 716.
[5] 284 Mich. App. 703, 704; N.W.2d 347, 349 (Mich. Ct. App. 2009).
[6] *Id.* at 710.
[7] The court argued that the plain language of MCL 769.1k and MCL 769.34(6) had not codified *Antolovich*, but rather had changed the law. As part of their reasoning, the court noted that MCL 769.1k was enacted over 12 years after the *Antolovich* decision. *See id.*
[8] *Id.* (citing People v Dunbar, 264 Mich. App. 240, 254-255; 690 N.W.2d 476 (2004)).
[9] People v. Jackson, 483 Mich. 271, 289; 769 N.W.2d 630, 640 (Mich. 2009).

"justice dictates that there must be some basis for determining whether a discretionary decision like the amount of a fine constitutes an abuse of that discretion."[10]

b. Courts Applying the Michigan Excessive Fines Clause Using Federal Principles

Michigan courts have, in general, not directly invoked the federal Excessive Fines Clause in cases involving fees, fines, and restitution. Instead, various Michigan courts have analyzed the state's equivalent using federal principles, noting the state equivalent's similarity to the protections of the Eighth Amendment.[11] A key example of this can be found in *In re Forfeiture of $25,505*.[12] Operating in a pre-*Timbs v. Indiana* world, the Court of Appeals noted that the Excessive Fines Clause did not necessarily apply to the states.[13] The court then analyzed whether the fine in question was excessive under the Michigan Constitution, relying on federal case law.[14] Now that *Timbs* has explicitly extended the Excessive Fines Clause to the states,[15] there might be space to argue that state courts should apply the federal Excessive Fines Clause, explicitly.

3. *Austin v. United States* in the Juvenile Delinquency Context

a. Overview of *Austin v. United States*

You asked me to research whether *Austin v. United States* has been applied in the juvenile delinquency context.[16] *Austin* involved an individual who had been convicted of cocaine

[10] People v. Brunke, Nos. 341160 & 341161, 2019 WL 488797, at *3 (Mich. Ct. App. Feb. 7, 2019).
[11] *See, e.g.*, *In re* Forfeiture of 5118 Indian Garden Rd., 654 N.W.2d 646, 648–49 (Mich. Ct. App. 2002) ("These factors dovetail, to a certain extent, with the United States Supreme Court's statement in United States v. Bajakajian, 524 U.S. 321, 337 (1998). . . ."); *Antolovich*, 525 N.W.2d at 515 (declining to determine whether the fine violated the Eighth Amendment of the United States Constitution, but invalidating the fine as excessive under the state constitution).
[12] 560 N.W.2d 341, 347 (1996).
[13] *Id.*
[14] *Id.*
[15] Timbs v. Indiana, 139 S. Ct. 682, 688 (2019).
[16] Austin v. United States, 509 U.S. 602 (1993).

possession, after which the government filed an *in rem* action seeking forfeiture of his mobile home and auto shop. The Supreme Court, ruling in favor of Austin, held that civil forfeiture proceedings are "subject to the limitations of the Eight Amendment's Excessive Fines Clause.[17] The court further explained that any economic sanction can be considered a "fine" under the Excessive Fines Clause if it exists "in part to punish."[18] Redacted co-worker 1 ["RC"] noted that we have typically applied this test when we want to argue that things not expressly labeled fines—for example, fees, surcharges, or restitution—should be subject to the EFC's protections. RC also thinks that the same test should apply to determine whether the EFC applies to certain proceedings, such as penalties issued in civil or quasi-criminal contexts, and that this could be relevant in a juvenile context, as well.

b. *Austin* in Michigan Caselaw

Based on RC's initial search of Michigan caselaw, he asked me to look at the applicability of *People v. Hana*, which he thought might be relevant.[19] Although I don't think it's entirely on point for EFC purposes, as I explain below, I have included analysis of the key issues. In *Hana*, the main question before the Supreme Court of Michigan was whether the full panoply of protections provided by the Fifth and Sixth Amendments of the United States Constitution applied to both the dispositional and adjudicative phases of a juvenile waiver hearing.[20] The

[17] *Id.* at 622.
[18] *Id.* at 610.
[19] 443 Mich. 202, 225–27; 504 N.W.2d 166, 177-178 (1993).
[20] Under Michigan law, on the motion of the prosecutor, and after a hearing, the juvenile court may waive jurisdiction for the defendant to face trial as an adult, if the child is at least 14, accused of a felony (or any other offense, whether or not designated a felony, that is punishable by more than one year's imprisonment) and if the court finds that (1) there is probable cause to believe the child committed the offense alleged and (2) the best interests of the child and the public would be served thereby. *See* MCL Sec. 712A.4.

court concluded that the constitutional protections that *Kent*[21] and *Gault*[22] had extended to juvenile proceedings apply in full force to the adjudicative phase of a juvenile waiver hearing.[23] However, the court declined to apply them to the dispositional phase of a waiver hearing.[24] The court interpreted the purpose behind the Probate Code and the court rules to favor individualized tailoring of a juvenile's sentence with emphasis on both the child's and society's welfare.[25]

c. Other Caselaw Applying *Austin* in the Juvenile Context

Other state courts have addressed *Austin* to some degree in juvenile cases. In *State v. Niedermeyer*, a juvenile driver's license was revoked by the state following the juvenile's arrest for underage consumption of alcohol.[26] The trial court reversed the revocation, declaring that revocation law unconstitutional.[27] The Alaska Supreme Court agreed with the trial court, and in their opinion emphasized that the statute was punitive in nature and did not provide the defendant with procedural due process.[28]

California courts have also discussed *Austin* in the juvenile context. In *In re J.C.*, the defendant argued that lifetime sex offender registration for juveniles is cruel and unusual punishment under the Eighth Amendment of the United States Constitution.[29] The Third District Court of Appeal declined to rule on whether rationales for sex offender registration applied to juveniles and held that public disclosure aspect of juvenile sex offender registration did not

[21] Kent v. United States, 383 U.S. 541, 556 (1966) (holding that waiver procedures for juveniles to criminal courts were "a 'critically important' action determining vitally important statutory rights of the juvenile.")
[22] *In re* Gault, 387 U.S. 1 (1967) (finding that the Fifth and Sixth Amendment rights recognized in adult criminal proceedings applied to juvenile proceedings).
[23] *Hana*, 443 Mich. at 225.
[24] *Id.* at 204.
[25] *Id.* at 226-227.
[26] 14 P.3d 264 (2000 Alas.).
[27] *Id.* at 266.
[28] *Id.* at 269–270
[29] 13 Cal. App. 5th 1201 (Cal. Ct. App. 2017).

render registration requirement punitive.[30] The court drew its reasoning from *In re Alva*, where a unanimous California Supreme Court held the mere registration of sex offenders was not a punitive measure subject to the proscription against cruel and/or unusual punishment.[31] In applying the *Austin* test, the court said that the civil sanctions are punishment covered by the Eighth Amendment when they "can only be explained as also serving either retributive or deterrent purposes," rather than "*solely* [serving] a remedial purpose."[32]

4. **Other Relevant 'Excessive Fines Clause' Case Law**

a. California

The California Second District Court of Appeal made a particularly strong stance against the criminalization of poverty, with implications for juvenile justice, in *People v. Duenas*.[33] The case applies a due process framework and does not include a specific Excessive Fines Clause analysis. I have included the case because of its strong anti-criminalization language and to provide context for other court's discussion of its holding. Although this case did not take place in juvenile court, it did involve fines resulting from juvenile citations that the defendant received as a teenager, and was unable to pay once she reached adulthood, eventually resulting in the revocation of her license and several periods of incarceration.[34] The court considered whether imposing fees and fines on the defendant without considering her ability to pay violated state and federal constitutional guarantees against punishing individuals for their poverty, and answered with a resounding yes.[35] Because poverty was the only reason the defendant could not pay

[30] *Id.*
[31] 33 Cal. 4th 254, 260; 92 P.3d 311, 312 (Cal. 2004).
[32] *Id.* at 283.
[33] 30 Cal. App. 5th 1157 (Cal. Ct. App. 2019).
[34] At the time the case was decided, Ms. Duenas was a young, homeless mother of several young children living on public assistance. The court also noted that each of Ms. Duenas's prior arrests and convictions had resulted from her initial inability to pay to restore her suspended license when she was a teenager. *Id.* at 1160-1161.
[35] *Id.* at 1160.

restitution and court costs, using the criminal process to collect that money would have been a violation of due process under the California Constitution's Article I, § 7 and the federal 14th Amendment.[36] The court stated that due process of law requires the trial court to conduct an ability to pay hearing and ascertain a defendant's present ability to pay before it imposes court facilities and court operations assessments under the specific provisions at issue.[37] Although that particular provision required the trial court to impose a restitution fine, the trial court was also required to stay the execution of the fine until and unless the state demonstrates that the defendant has the ability to pay the fine.[38]

While some subsequent courts have distinguished *Duenas* by limiting it to its facts, other courts have more directly criticized the decision, and – as it relates to this memo's topic – applied an Excessive Fines Clause analysis in similar situations.[39] In *People v. Aviles*, the Fifth District Court of Appeal found that the Excessive Fines Clause was more appropriate than a due process argument for an indigent defendant to challenge the imposition of fees, fines, and assessments.[40] In *People v. Hicks*, the Fifth District Court of Appeal held that, in contrast to *Duenas*'s due process analysis, a due process violation must be based on a fundamental right, such as denying a defendant access to the courts or incarcerating an indigent defendant for nonpayment.[41]

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[36] *Id.* at 1168-1169.
[37] *Id.* at 1164.
[38] *Id.*
[39] *See* People v. Caceres, 39 Cal. App. 5th 917, 928–929 (Cal. Ct. App. 2019) (declining to apply *Duenas*'s "broad holding" beyond its unique facts). *See also* People v. Lowery, 43 Cal. App. 5th 1046, 1055 (2020), *review denied* Mar. 11, 2020 (Stating that the "appellants were not caught in an unfair cycle, and they could have avoided the present convictions regardless of their financial circumstances.").
[40] 39 Cal. App. 5th 1055, 1069 (Cal. Ct. App. 2019).
[41] 40 Cal. App. 5th 320, 322 (Cal. Ct. App. 2019). *See also* People v. Kingston 41 Cal. App. 5th 272, 279 (Cal. Ct. App. 2019) (finding *Hicks* to be "better reasoned" than *Duenas*); People v. Caceres, 39 Cal. App. 5th 917, 928 (Cal. Ct. App. 2019) ("In light of our concerns with the due process analysis in *Duenas*, we decline to apply its broad holding requiring trial courts in all cases to determine a defendant's ability to pay before imposing court assessments or restitution fines.").

5. Conclusion

Although I could not find any specifically on-point caselaw in Michigan or the Sixth Circuit that discusses the Excessive Fines Clause in juvenile delinquency proceedings, *Timbs v. Indiana* and related litigation in state courts marks a promising shift in the Excessive Fines Clause being utilized to challenge to court-imposed fees and fines.

Applicant Details

First Name	**Jada**
Middle Initial	**K**
Last Name	**Satchell**
Citizenship Status	**U. S. Citizen**
Email Address	**jsatche3@eagles.nccu.edu**
Address	**Address** Street **3000 Orchid St. Apt. 3349, 3349** City **Cary** State/Territory **North Carolina** Zip **27519** Country **United States**
Contact Phone Number	**2525653323**

Applicant Education

BA/BS From	**University of North Carolina-Greensboro**
Date of BA/BS	**December 2020**
JD/LLB From	**North Carolina Central University School of Law** **http://law.nccu.edu**
Date of JD/LLB	**May 4, 2024**
Class Rank	**5%**
Law Review/Journal	**Yes**
Journal(s)	**Science and Intellectual Property Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

Recommenders

Craig-Taylor, Phyliss
pcraigtaylor@nccu.edu
Corbett, Donald
dcorbett@nccu.edu
530-7159
Green, David
dgreen@nccu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jada Satchell
Durham NC, jadasatchell1@gmail.com, 252-565-3323

Dear Judge Walker,

My name is Jada Satchell, and I am a 3L at North Carolina Central University School of Law. I am contacting you to express my interest in the available clerkship position within your chambers. I learned about this opportunity through OSCAR. I understand that as a law clerk, you must have strong research and writing skills, in addition to a strong work ethic. I embody these characteristics due to my experience as a law clerk with both Legal Aid of North Carolina and Bressler, Amery & Ross, P.C., as well as my strong academic performance in law school.

As a result of my prior law clerk experience, I have the necessary skills to be a strong law clerk. With Legal Aid, my role on the domestic violence team challenged me in a number of ways to produce superior work, while working under tense deadlines. Due to the sensitive nature of domestic violence hearings, time restraints were placed on everything I worked on, and I consistently produced superior work within the time allotted. During my 2L Legal Letters class, I had the opportunity to conduct extensive research on Title VII sexual harassment claims and draft an interoffice memorandum. Within the memorandum, I addressed matters such as vicarious liability, the factors a federal court would consider when determining whether an employer's actions are deemed severe and pervasive, and the sufficiency of the employer's remedial measure. Most recently, with Bressler, I have gained knowledge concerning the Fair Debt Collection Practices Act ("FDCPA"), the Federal Interpleader Statutes, and the Financial Industry Regulatory Agency ("FINRA") through drafting various memorandums, attending arbitrations, and pre-conference hearings. Through these assignments, I have sharpened my already distinguished skills in time management, efficiency, and effective research. I am a first-generation law student, and I have worked since I was thirteen years old while consistently exuding academic excellence and it is from both my academic and personal life experiences, I am confident that I would be a valuable law clerk.

I am specifically interested in a clerkship with you, as I would gain a deeper understanding of the appropriate application of the law in a just and fair manner. I am extremely interested in furthering my experience in both civil and criminal law, as it is important to me to be well-rounded in the legal profession. The federal court system operates to ensure uniformity of the law and I understand your decisions help mold and set precedents that are the basis for many legal claims. It is extremely important that a law clerk accurately conveys the decisions of the court, aid in judicial efficiency, and provide an in-depth understanding of the law. Due to my prior experiences, work ethic, and love for the law, I embody the characteristics needed for a federal law clerk. It would be an honor to work alongside you, and to be able to learn firsthand how dynamic and complex the law can be in protecting the rights of citizens. I am confident that I can be an exceptional law clerk and I welcome the opportunity to speak with you at your earliest convenience so I can highlight the experiences in my enclosed resume. Thank you in advance for taking the time to consider my application.

JADA SATCHELL

Greenville, NC - 252-565-3323 - jadasatchell1@gmail.com

EDUCATION AND TRAINING

North Carolina Central University Durham, NC
Juris Doctor Expected in 05/2024
Honors: Title III Scholar, 2021, Dean's List 2022-23, Science and Intellectual Property Law Review Publication Award Recipient **GPA: 3.48/4.00**

The University of North Carolina At Greensboro Greensboro, NC
Bachelor of Arts: Political Science 12/2020
Minor in African Diaspora Studies **GPA: 3.43/4.00**
Honors: Dean's List Honoree Fall 2019, Spring 2020, Fall 2020; Spartan Scholar, 2017-2020; Chick-Fil-A Remarkable Leadership Scholar, 2020; UNCG Spartan Scholarship Recipient, 2017-2020

EXPERIENCE

NCCU SCHOOL OF LAW Durham, NC
Civil Procedure Tutor 05/2022 to 05/2024

- Assisted over fifty students per semester with understanding complex legal issues as it relates to the Federal Rules of Civil Procedure.
- Regularly collaborated with the assigned professor to ensure consistency in educating students.
- Created model responses and adapted learning materials to aid in student retention.

BRESSLER, AMERY & ROSS, P.C. Birmingham, AL
Summer Associate 05/2023 to 07/2023

- Attended negotiations, depositions, arbitrations, conferences, and other client-related activities with the Labor and Employment, Securities, and Insurance practice groups.
- Produced legal memorandums and research reports for actions challenging FINRA dealing with Financial Regulatory claims, the FDCPA dealing with consumer debt protection, and Federal Interpleader actions associated with insurance claims.
- Attended expungement trainings and conducted research on post-conviction relief for pro bono projects.

LEGAL AID OF NC Wilson, NC
MLK Intern 05/2022 to 07/2022

- Conducted over five client interviews weekly and regularly examined intake information for accuracy concerning domestic violence victims.
- Drafted memorandums, consent orders, engagement and closing letters for domestic violence victims, fair housing act claims, and consumer protection.
- Reviewed managing attorney's appellate briefs for accuracy.
- Attended and assisted in court proceedings for domestic violence victims and fair housing claims.

CHICK-FIL-A Greensboro, NC
Assistant Director of Operations 08/2018 to 06/2021

- Facilitated a remodel for a store grossing over six million dollars.
- Developed department performance goals and methods for achieving milestones.
- Evaluated key business metrics and recommended adjustments to policies and procedures.
- Improved training to reduce knowledge gaps and eliminate performance roadblocks.
- Coached 40 direct reports per shift on daily operations and company policies and procedures.
- Trained other directors and assistant directors of operations.

PROFESSIONAL AFFILIATIONS

Science and Intellectual Property Law Review

- Staff Editor, Editor-In-Chief 04/2023

NCCU Law 3L Class Council

- Vice-President 04/2023

Display Transcript

820783147 Jada K. Satchell
Jun 04, 2023 05:41 pm

This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

Institution Credit Transcript Totals Courses in Progress

Transcript Data

STUDENT INFORMATION

Birth Date: Sep 07, 1999

Curriculum Information

Current Program
Juris Doctor
Program: Law
College: Law School
Campus: Regular
Major and Department: Law, Law

***Transcript type:GAPP is NOT Official ***

DEGREE AWARDED

Sought: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree
Major: Law

INSTITUTION CREDIT **-Top-**

Term: Fall 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	7000	P	Critical Thinking	P	1.000	0.000	
LAW	7010	P	Contracts I	C	2.000	4.000	
LAW	7030	P	Civil Procedure I	B+	3.000	9.990	
LAW	7050	P	Property I	B	3.000	9.000	
LAW	7080	P	Criminal Law	C-	3.000	5.010	
LAW	7121	P	Legal Reasoning & Writing	A-	3.000	11.010	

Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA

Current Term:	15.000	15.000	15.000	14.000	39.010	2.786
Cumulative:	15.000	15.000	15.000	14.000	39.010	2.786

Unofficial Transcript

Term: Spring 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	7040	P	Torts I	B+	3.000	9.990	
LAW	7051	P	Property II	A-	3.000	11.010	
LAW	7111	P	Contracts II	B	3.000	9.000	
LAW	7122	P	Legal Reasoning & Writing II	A-	2.000	7.340	
LAW	7123	P	Intro to Legal Research	A	1.000	4.000	
LAW	7130	P	Civil Procedure II	A	3.000	12.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	53.340	3.556
Cumulative:	30.000	30.000	30.000	29.000	92.350	3.184

Unofficial Transcript

Term: Summer 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	4600	P	Negotiation (Eve)	A	3.000	12.000	
LAW	8018	P	Tech & Formation of Govt Contr	A	2.000	8.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	5.000	5.000	5.000	5.000	20.000	4.000
Cumulative:	35.000	35.000	35.000	34.000	112.350	3.304

Unofficial Transcript

Term: Fall 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	7041	P	Torts II	B+	2.000	6.660	
LAW	8000	P	Appellate Advocacy I	A-	3.000	11.010	

LAW	8010	P	Evidence	A	3.000	12.000
LAW	8019	P	Race In the Law	A-	3.000	11.010
LAW	8030	P	Constitutional Law I	A	3.000	12.000

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	14.000	52.680	3.762
Cumulative:	49.000	49.000	49.000	48.000	165.030	3.438

Unofficial Transcript

Term: Spring 2023

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	8013	P	Legal Letters-Empl Discriminat	A	2.000	8.000	
LAW	8130	P	Constitutional Law II	A	3.000	12.000	
LAW	8210	P	Criminal Procedure	B+	3.000	9.990	
LAW	8260	P	Law Journal I (SIPLR)	P	1.000	0.000	
LAW	9040	P	Business Associations	B+	4.000	13.320	
LAW	9290	P	Professional Responsibility	A	2.000	8.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	14.000	51.310	3.665
Cumulative:	64.000	64.000	64.000	62.000	216.340	3.489

Unofficial Transcript

TRANSCRIPT TOTALS (PROFESSIONAL (LAW)) **-Top-**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Transfer:	0.000	0.000	0.000	0.000	0.000	0.000
Overall:	64.000	64.000	64.000	62.000	216.340	3.489

Unofficial Transcript

COURSES IN PROGRESS **-Top-**

Term: Fall 2023

Subject	Course	Level	Title	Credit Hours
LAW	8020	P	Intestate Succession & Wills	3.000

LAW	8070	P	Family Relations	3.000
LAW	8223	P	Trademark Clinic I	3.000
LAW	9030	P	Sales/Secured Transactions	4.000
LAW	9558	P	ALA-Contracts,CivPro,CrimLaw	2.000

Unofficial Transcript

RELEASE: 8.7.1

North Carolina Central University School of Law, 640 Nelson Street, Durham NC 27707

Dear Selection Committee:

Re: Jada Satchell

I am delighted and honored to recommend Jada Satchell for a judicial clerkship. As veteran legal educator, the former dean and now a professor at North Carolina Central University School of Law, I have enjoyed the opportunity to know and teach thousands of students during my career. I have known Ms. Satchell for two years, and I can truly say it was my pleasure to serve as her professor.

Ms. Satchell was my student in four classes—Professional Responsibility, Legal Letters, Property I and Property II; thus, we spent the entirety of the two years seeing each other three and sometimes four times per week. Early in first-year, she distinguished herself as hardworking and earned my and her peers' respect. Her ability to see beyond the surface issues and to add context to the class discussion was always welcomed. As her professor, I had the opportunity to observe her participation and interaction in class with her fellow students. She captured the classroom with her soft-spoken self-confidence, honesty, and positive attitude. This was quite a feat, when some class sessions had to meet remotely through zoom.

In my legal writing class, I recognized Ms. Satchell as an extraordinary communicator and writer. Students were tasked with drafting a thesis paper related to Real Estate Transaction and Land Loss.
Then they had to a present their findings to the class. The final paper created by Ms. Satchell exhibited her outstanding legal research and writing skills. Additionally, Ms. Satchell clearly articulated her research findings during her presentation and throughout her thesis paper. Her strong work ethic and determination lead her to receive exceptional results in class.

In addition, Ms. Satchell has an elevated level of integrity and uprightness. The high ethical standards she held for herself allowed her to comprehend the professional responsibility issues raised in the class. During the class, Ms. Satchell further demonstrated that she was an engaging individual who could instruct people by example. I can confidently say that Ms. Satchell is a great future leader from whom people can pattern their character.

Ms. Satchell was a strong student in all respects, evidenced by her academic achievements, work ethic, and ambition. She acts politely, and respectably, whether professionally or in her personal affairs. I wholeheartedly recommend Ms. Satchell for her clerkship. Her skills in research and writing combined with her analytic ability make her an excellent fit. As a former Alabama Supreme Court Clerk, I can attest that she has the necessary skills to succeed. I am confident she will be an invaluable addition to your team and one to watch out for in the future. I recommend her without reservation.

Sincerely,

Phyliss Craig-Taylor, Professor of Law

North Carolina Central University School of Law, 640 Nelson Street, Durham NC 27707

June 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a professor at the North Carolina Central University School of Law in Durham, NC, where I teach Torts and Constitutional Law. The above-referenced party is a candidate for a clerkship in your chambers, beginning in the Fall of 2024. I'm extremely pleased to offer this letter in support of her candidacy.

I taught Ms. Satchell this year in Con Law I and II, so I had her all year long and had ample opportunity to assess her skill set. In short, I cannot say enough good things about her. Students tend to have a love-hate relationship with Con Law. Seeing the law potentially change in real time because of the contemporary cases (See e.g., Dobbs v. Jackson Women's Health) gives it a real-world impact more so than other classes, but students also get frustrated with the Court's shifting positions over time, which can result in inconsistency in the law. Ms. Satchell performed exceptionally well in my classes. Her brain works very quickly. She is very intellectually curious. She is a good communicator, in both oral and written formats, and she is disciplined and very professional in how she goes about her day-to-day work. On occasion, students will come to me at the end of the semester and ask … why didn't I make an A? I frequently tell them because their daily preparation was not an A level, making it more difficult for them to achieve that mark at exam time. Ms. Satchell did A level work every single day, which explained why she fared so well in the class. Her consistency of effort is one of her major attributes.

While it is more of an intangible factor than substantive, I must also say Ms. Satchell is one of the more personable students I have ever taught. She has excellent social skills and possesses the ability to get along well with people from multiple backgrounds with ease. I think her innate ability to connect with people will cut down on the social distance that often exists between lawyer and client, which I think will help create a smoother transition from student to practitioner. I think she possesses immense potential for our field.

I know these clerkships are highly competitive. My hope though is that you will take the time to meet Ms. Satchell. I think you will see why we feel so strongly about her ability to thrive in this position. Thank you very much for your time, and consideration of her application.

Sincerely,

Don Corbett

Professor of Law

Donald Corbett - dcorbett@nccu.edu - 530-7159

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

This letter is in support of Jada Satchell's application to be your law clerk. Ms. Satchell was a student in my Civil Procedure I and II classes as well as Legal Letters-Employment Discrimination class. As a former law clerk to the late Judge John Garrett Penn in United States District Court, I understand the importance of having a law clerk with strong writing and analytical skills as well as a person with a pleasant personality in a small staff. Ms. Satchell has the skills and personality to be a great law clerk and be a positive addition to your chambers. I enthusiastically support Ms. Satchell's application to be your law clerk.

She is a hardworking and very bright student. In my Civil Procedure I and II classes, Ms. Satchell received high grades in both semesters, and she received the highest grade in the spring semester. She was always prepared for class, and she demonstrated a thorough understanding of the material. In the Legal Letters class, where she had to draft an engagement letter, an interoffice memorandum, an opinion letter and letter to the opposing party, she demonstrated very strong research and writing skills. Furthermore, the class required her to demonstrate an understanding of complex federal statutes and regulations and to be sensitive to issues of citizens dealing with sexual harassment. Ms. Satchell excelled in the class and received an A as her final grade. Moreover, she has strong work ethics, and she carries herself in a professional manner. She is a confident woman, and she is open to constructive criticism. Ms. Satchell interacts well with her peers and clearly is a team player. I have had the opportunity to interact with Ms. Satchell outside of the classroom and I know her to be a pleasant person. I was so impressed with Ms. Satchell's academic skills and professionalism that I recommended her to by the tutor for my Civil Procedure class during her second year. She has excelled as a tutor and the student feedback regarding her contributions is outstanding.

I am confident that after you have reviewed her application, you will agree that she will be a great law clerk and that she would as an asset to your chambers. If you have any questions about Ms. Satchell, please do not hesitate to contact me.

Sincerely yours,

David A. Green
Professor of Law

David Green - dgreen@nccu.edu

WRITING SAMPLE

As a 2L law student at NCCU School of Law, I prepared the attached memorandum for a legal writing assignment. The memorandum examines the potential success of a clients claim for sexual harassment against their employer. I have received permission from my instructor to use this memorandum as a writing sample.

OFFICE MEMORANDUM

To: David A. Green Esq.

From: Jada Satchell Esq.

Re: Alan Burns Allegations of Sexual Harassment

Date: February 15, 2023

QUESTIONS PRESENTED

I. Did Joyce Newman, in reducing Mr. Burns caseload by fifty percent, establish that she was his supervisor and impute liability to the Firm under the doctrine of vicarious liability?

II. Were Ms. Newman's comments like "I'd love to see you in nothing but that tie," "I am built for comfort not style," and her attempt to show Mr. Burns her breasts after a holiday party considered to be severe and pervasive?

III. Did Ms. Newman's agreement to forgo her bonus, and the Firms' reassignment of Alan Burns to the Chicago office of the Firm following the HR investigation of Ms. Newman's behavior constitute a sufficient remedial measure?

BRIEF ANSWERS

I. Yes. Ms. Newman's reduction of Mr. Burns caseload is a tangible employment action. *See* Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 745 (1998). As Mr. Burns' direct supervisor, Ms. Newmans' actions impute vicarious liability to the Firm. *See* Katz v. Dole, 709 F.2d 251, 255 (4th Cir. 1976). Ms. Newman's reduction of Mr. Burns caseload only after he placed the sexual harassment article on her desk constitutes a tangible employment action. *See* Johnson v. Booker T. Washington Broad. Serv., Inc., 234 F.3d 501, 512 (11th Cir. 2000) (transfer to midday shift resulting in $8,000 pay decrease was a tangible employment action.)

II. Yes. Ms. Newman's comments and attempt to show her breasts at the holiday party were severe and pervasive due to the power dynamic between the two and the continuous nature of their interactions. *See* Jennings v. Univ. of N. Carolina, 482 F.3d 686, 696 (4th Cir. 2007) and Swentek v. USAIR, Inc., 830 F.2d 552, 562 (4th Cir. 1987). A reasonable person would consider Mr. Burns' experience to be hostile or abusive. *See* Katz, 709 F.2d at 255.

III. No. Ms. Newman's voluntary surrender of her bonus, and the Firms' decision to transfer Mr. Burns to its Chicago office were not sufficient remedial measures. *See* Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991). The Firm's actions did not deter future harassers and instead punished the victim. *Id.*

STATEMENT OF FACTS

Alan Burns is a third-year associate at Hickman, Mays & Taylor (hereafter "the Firm") in Raleigh, North Carolina. The following information recaps what was provided by Mr. Burns in our initial interview. Ms. Newman is a fifty-seven-year-old divorcee with two children and operates as Mr. Burns' direct supervisor. She supplies over fifty percent of his work and is the Raleigh offices' top "rainmaker." Additionally, she is one of the top "rainmakers" in the entire Firm. Ms. Newman handles large-scale arbitration and mediation cases. Ms. Newman has said to Mr. Burns, "[w]ould you consider an older woman," she has also remarked that she was "[b]uilt for comfort, not for style" and that she "[w]ould love to see you in nothing but that a tie." Moreover, in one particular instance, she attempted to show her breasts to Mr. Burns after a holiday party. During this incident, she had exposed herself when his back was to her; however, Mr. Burns' secretary, Joanne Mimms, saw what she had done, which was evident by her exclamation, "Joyce, I can't believe you did that." Upon turning around, Mr. Burns indicated that he saw her lowering her blouse.

Her behavior is frequent, and he experiences a variety of inappropriate comments or actions almost weekly. Mr. Burns mentioned his secretary was present or made aware of every instance of Ms. Newman's improper conduct. Furthermore, he believes that he is the only individual experiencing this behavior. After placing an article about sexual harassment in the workplace on Ms. Newman's desk, she gave Mr. Burns the "silent treatment" and did not give him any more cases. Following this behavior, Mr. Burns went to David Bickers, the managing partner of the Raleigh Office, who stated he would assign the matter to human resources located in the New York office. After receiving the human resources investigation results, Mr. Bickers sent Mr. Burns a letter detailing the Firm's response to his complaints. Within the letter, the Firm stated, "Joyce's interaction with you did not give rise to a "sexual harassment" violation as provided for in Title VII of the Civil Rights Act of 1964." Although the Firm did not deem Joyce's conduct to be sexual harassment, she and the Firm agreed that she would not receive her bonus for that fiscal year. Furthermore, the Firm decided to reassign Mr. Burns to its office in Chicago to avoid "any further interaction with Joyce." The Firm has indicated that it will adjust Mr. Burns' salary to be consistent with the cost of living in Chicago; however, it is not his desire to relocate.

DISCUSSION

Mr. Burns may establish that he was a victim of sexual harassment. To assert a claim for sexual harassment, a plaintiff must satisfy four requirements. (1) the plaintiff must prove the conduct was unwelcome; (2) that the conduct was based on their sex; (3) the conduct was severe and pervasive such that it affected the plaintiff's work environment; and (4) the actions of the employee are imputable to the employer. Spicer v. Com. of Va., Dep't of Corr., 66 F.3d 705, 709–10 (4th Cir. 1995) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 1993). Here, Mr. Burns may show that the actions of Ms. Newman are attributed to the Firm because she committed a tangible employment action when reducing his caseload by more than fifty percent. *See* Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 745 (1998). Moreover, Mr. Burns may establish that Ms. Newman's actions were sufficiently severe and pervasive due to their power dynamic and the continuous nature of their interactions. *See* Jennings v. Univ. of N. Carolina, 482 F.3d 686, 696 (4th Cir. 2007). Furthermore, Mr. Burns may show that Ms. Newman's voluntary surrender of her bonus and the Firm's reassignment of him to its Chicago office were insufficient remedial measures

because they did not discourage future harassers and instead punished the victim. *See* Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991). Thus, Mr. Burns is likely to be successful in a claim for sexual harassment against Ms. Newman and the Firm.

Firm Liability

Joyce Newman is Alan Burns' supervisor, and as such, her actions of reducing Mr. Burns' caseload after he placed the sexual harassment article on her desk impute liability to the Firm. An employer is liable for a partner's actions under the doctrine of respondeat superior. *See* Katz v. Dole, 709 F.2d 251, 255 (4th Cir. 1976). Since Ms. Newman is a partner in the Firm's Raleigh office and operates as Mr. Burns' direct supervisor, the Firm is liable for her actions when operating within the scope of her employment. *See Id.* Her decision to reduce Mr. Burns' caseload by more than fifty percent was one she made as both his supervisor and a partner at the Firm. In *Katz,* the court stated that a plaintiff has an additional responsibility of showing firm liability only if the alleged harasser is not a "proprietor, partner, or corporate officer." *Id.* Here, Mr. Burns may establish that the Firm is liable for the actions of Ms. Newman because she falls within one of the categories of automatic liability found by the court in *Katz. Id.*

Ms. Newmans' decision to reduce Mr. Burns' caseload by more than fifty percent may constitute a tangible employment action subject to vicarious liability. To determine whether an employer is subject to vicarious liability rather than negligence, there has to be a tangible employment action taken by a supervisor with authority over the employee. Burlington Indus., 524 U.S. at 745, *See also*, Kotcher v. Rosa & Sullivan Appliance Ctr., Inc., 957 F.2d 59, 62 (2d Cir. 1992) (If the plaintiff can show… an economic injury from their supervisor's actions, the employer becomes strictly liable…The supervisor is deemed to act on behalf of the employer when making decisions that affect the economic status of the employee *Id.*). A tangible employment action occurs when an employee is terminated, suspended, or reassigned with substantially different responsibilities. *Compare* Butler v. Ysleta Indep. Sch. Dist., 161 F.3d 263, 268 (5th Cir. 1998) ("Fact that the elementary school principal, who allegedly sent harassing anonymous letters to two female teachers, decided to reassign them to different grade levels did not constitute a tangible employment action" *Id.*), and Cotton v. Cracker Barrel Old Country Store, Inc., 434 F.3d 1227, 1232 (11th Cir. 2006) (Employee failed to establish tangible employment action due to lack of causal connection between harassment and subsequent reduction in hours *Id.*), *with* Johnson v. Booker T. Washington Broad. Serv., Inc., 234 F.3d 501, 512 (11th Cir. 2000) (Reassignment from midday shift to evening shift that resulted in an $8000.00 pay decrease was sufficient to establish a tangible employment action. *Id.*), and Durham Life Ins. Co. v. Evans, 166 F.3d 139, 153–54 (3d Cir. 1999) (Insurance agent's 50% pay decrease due to the number of lapsed policies received was a tangible adverse employment action *Id.*). Here, Mr. Burns' reduction in caseload would constitute a tangible employment action.

Like in *Johnson*, when the court found the actions of the employer to be a tangible employment action, Mr. Burns may establish that a court would likewise find the same. *See* Johnson, 234 F. 3d at 512. The court held that a midday to night shift transfer resulting in an $8000 pay decrease was a tangible employment action. *Id.* Here, Mr. Burns may persuade the Court to act similarly because the plaintiff in *Johnson*, like Mr. Burns, was supervised by their alleged harasser. *Id*. Additionally, the plaintiff in *Johnson* contended the transfer of shifts was a direct result of the sexual harassment they refused to endure from their supervisor. *Id*. In the present

matter, Mr. Burns reports directly to Ms. Newman. Because of this, he may show that his sudden reduction in casework and her refusal to speak to him resulted from Ms. Newman's reaction to the sexual harassment article he placed on her desk. Thus, the reduction of Mr. Burns' caseload may constitute a tangible employment action.

Unlike in *Cotton*, when the court found no causal connection between the reduction of an employee's hours and the alleged sexual harassment, Mr. Burns will be able to show a causal connection between the reduction of his caseload and Ms. Newman's harassment. Cotton, 434 F. 3d at 1232. In *Cotton*, the Court noted the reduction of the plaintiff's hours, suggesting it stemmed from regular business practices during seasonal periods. *Id*. However, here, Mr. Burns may prove that his reduction was causally connected to his harassment because it occurred immediately after he placed the sexual harassment article on Ms. Newman's desk. *See Id*. Prior to the placement of the article, Ms. Newman regularly assigned Mr. Burns casework and spoke to him; Ms. Newman's behavior changed only after she found the article on her desk. Therefore, it is likely that Mr. Burns will be able to successfully argue that The Firm is liable for the actions of Ms. Newman.

Thus, it is likely that Mr. Burns may establish that Ms. Newman committed a tangible employment action when she reduced his caseload by more than fifty percent. *See* Burlington Indus., 524 U.S. at 745. Since Ms. Newman was acting as Mr. Burns' supervisor and her reduction of his caseload was made within the scope of her employment, the Firm may be held liable for her actions. *See* Katz, 709 F.2d at 256.

Severe and Pervasive

Ms. Newman's comments like "I would like to see you in nothing but that tie" and "I am built for comfort, not style," along with her attempt to show Mr. Burns her breasts after a holiday party was, both severe and pervasive. Harassment amounts to be sufficiently severe or pervasive if it creates "an environment that a reasonable person would find hostile or abusive" and the victim "subjectively perceive[s] ... to be abusive." Jennings, 482 F.3d at 696 (quoting Harris, 510 U.S. at 21). Merely making an offensive comment toward an employee is insufficient to implicate Title VII. *Id.* (quoting Rogers v. E.E.O.C., 454 F.2d 234, 238 (5th Cir. 1971)). In determining whether an environment is hostile, a court may examine "the frequency of the discriminatory conduct; its severity; and whether it reasonably interferes with an employee's work performance." Harris, 510 U.S. at 21. *Compare* Jennings, 482 F. 3d at 698. ("Male soccer coach's persistent inquiries into his female team members' sex lives, if proven, was sufficiently severe or pervasive to create a hostile or abusive environment, given, inter alia, his power and influence as the most successful women's soccer coach in United States college history, and age disparity between coach and players." *Id*.) and Swentek v. USAIR, Inc., 830 F.2d 552, 562 (4th Cir. 1987) (Pilot for several years used sexually abusive language and conduct such that the case should not have been dismissed pursuant to summary judgment. *Id*.) *with* Harris v. Clyburn, 47 F.3d 1164 (4th Cir. 1995) (Defendant-Supervisor never said anything sexual in nature, fondled, or asked plaintiff-employee out on a date, therefore allegations were not severe or pervasive. *Id*.) Here, Mr. Burns may be able to establish that Ms. Newman's comments and actions were severe and pervasive.

Like in *Jennings*, where the Court found the power dynamic between the head soccer coach and his players to be influential as it relates to the severity and pervasiveness of his statements, Mr. Burns may also argue a court should consider the power dynamic between him and Ms. Newman. *See* Jennings, 482 F.3d at 696. In *Jennings*, the Court held that due to the power dynamic between the plaintiff and defendant, his continuous vulgar comments created a hostile environment

because the plaintiff feared retaliation or reprimand. *Id*. at 697. As Mr. Burns' direct supervisor, and supplier of fifty percent of his caseload, Ms. Newman assumes a similar role as the coach in *Jennings*. *See Id*. Her continuous comments and attempt to show Mr. Burns' breast may be examined in a light similar to the coach in *Jennings* because both individuals were in positions of direct authority to the alleged victims. *See Id*. The Court in *Jennings* also held that the defendant's comments, coupled with his authority, facilitated an environment where the plaintiff could not fully participate in the soccer program. *See Id* at 698. Here, Mr. Burns may argue that Ms. Newman's comments, attempt to show her breasts, and her reduction in his casework, coupled with the fact that she is one of the Firm's top partners, interferes with his ability to perform at work effectively. Therefore, it is likely that Mr. Burns may be able to successfully argue that the objective standard set forth in *Harris* is met. Harris, 510 U.S. at 21.

Similar to *Swentek*, where the Court found that the defendant's continuous sexually explicit comments and acts were sufficient to argue severe and pervasive behavior, Mr. Burns may establish that a court would find the same here. Swentek, 830 F.2d at 562. In *Swentek*, the Court found that the plaintiff alleged more than an "ordinary run of insult and offense" because she communicated how the defendant consistently used sexually suggestive language and "dropped" his pants in front of her. *Id*. Here, Mr. Burns may establish that the comments like "I'd love to see you in nothing but that tie," "Would you consider an older woman," and "I am built for comfort, not style" are sexually suggestive and as such should be treated in a similar manner as the Court in *Swentek*. *See Id*. Furthermore, Mr. Burns may establish that Ms. Newman's lifting her shirt to show him her breasts after the Firm's holiday party is analogous to the defendant's behavior in *Swentek* when he "dropped" his pants in front of the plaintiff. *See Id*. Mr. Burns will likely be able to assert that Ms. Newman's comments and actions were not "ordinary offenses" because they were continuous and sexually suggestive. *See Id*. Moreover, Mr. Burns may establish that Ms. Newman's actions were severe because after he placed the sexual harassment article on her desk, she substantially reduced his caseload and refused to speak to him. Additionally, Mr. Burns may establish Ms. Newman's comments and actions were pervasive because she interacted with him in this manner weekly, and Joanne Mimms can confirm this. Hence, it is likely Mr. Burns may successfully assert that Ms. Newman's interactions with him were severe and pervasive.

Unlike in *Harris*, where the Court found that the plaintiff did not assert any facts that suggested the defendant's conduct was severe and pervasive, Mr. Burns will be able to present viable facts that suggest a Court here should decide otherwise. Harris 47 F.3d 1164. In *Harris*, the court held that because the plaintiff failed to assert that the defendant did anything other than tickle her in the hallway, she had not alleged sufficient facts to be severe and pervasive. *Id*. Here, Mr. Burns may establish that because Ms. Newman made sexually suggestive comments and attempted to show her breast to him; he has sufficiently alleged severe and pervasive facts. Additionally, in *Harris*, the Court held that because the plaintiff did not allege the defendant had ever made sexually explicit comments, fondled her, or did anything sexual in nature, the plaintiff did not meet her burden of alleging severe and pervasive conduct. *Id*. (citing Meritor Savings Bank, FSB v. Vinson, 477 U.S. 67 (1986). Unlike the plaintiff in *Harris*, Mr. Burns will be able to allege that Ms. Newman's comments were sexual in nature and should be treated differently as it relates to sufficiency. *Id.* Furthermore, the Court in *Harris* held that the plaintiff did not sufficiently establish severe and pervasive conduct because she never complained of the defendant's behavior, never applied for another job, and was not demoted. *Id*. Here, Mr. Burns may establish that the reduction of his caseload by over fifty percent, his act of contacting David Bickers, and the Firm's decision

to re-assign him to its Chicago office further communicate that Ms. Newman's conduct was severe and pervasive. Thus, it is likely that Mr. Burns would be successful in establishing Ms. Newman's conduct was severe and pervasive.

Therefore, Mr. Burns will likely be successful in asserting that Ms. Newman's comments and actions were severe and pervasive because the power dynamic between the two limited his ability to protest her actions. *See* Jennings, 482 F.3d at 696. Furthermore, he may establish that the continuous nature of her comments, her decision to stop speaking to him, and her reduction of his caseload by over fifty percent caused a hostile work environment. *See* Swentek, 830 F.2d at 562.

Sufficiency of Remedial Measure

Joyce Newman's agreement to forgo her bonus and the reassignment of Mr. Burns to the Chicago office of the Firm following its HR investigation of Ms. Newman's behavior did not constitute a sufficient remedial measure. Remedial measures should be "reasonably calculated to end the harassment." Katz, 709 F.2d at 256. The reasonableness of an employer's remedial measure depends on its ability to diminish the likelihood of the person engaging in the harassment to act again. Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991) (citing Katz, 709 F.2d at 256 for the assertion that a remedial measure should be reasonably calculated). Failure to punish a harasser casts doubt on an employer's commitment to maintaining a harassment-free workplace. Swenson v. Potter, 271 F.3d 1184, 1197 (9th Cir. 2001). Furthermore, an employer should apply a remedy to deter all of its employees from engaging in inappropriate conduct. Ellison, 924 F.2d at 882. "Where an employee is not punished even though there is strong evidence that he is guilty of harassment, such failure can embolden him to continue the misconduct and encourage others to misbehave." Swenson, 271 F.3d 1197. *Compare* Ellison, 924 F. 2d at 882 (Transfer of the victim to another location was an insufficient remedial measure because it punished the victim. *Id.*) *with* Nash v. Electrospace Sys., Inc., 9 F.3d 401, 404 (5th Cir. 1993) (Transfer of the victim was a sufficient remedial measure because it insulated her from further contact with the harasser. *Id.*) and Portera v. Winn Dixie of Montgomery, Inc., 996 F. Supp. 1418, 1427 (M.D. Ala. 1998) (Remedial measure was sufficient because although the employer considered transferring the plaintiff, it ultimately transferred the harasser. *Id.*) Accordingly, Mr. Burns may be able to establish that Ms. Newman's agreement to forgo her bonus and his transfer to the Chicago office was not a sufficient remedial measure.

Similar to *Ellison*, where the Court found that the transfer of a victim of sexual harassment was not a sufficient remedial measure, Mr. Burns may be able to assert the same here. Ellison, 924 F.2d at 882. In *Ellison,* the Court held that when determining the adequacy of a remedy, a court should take into account the remedy's ability to deter future harassers. *Id.* Here, Ms. Newman's voluntary surrender of her yearly bonus could be considered insufficient due to its inability to deter potential harassers. *See Id.* Mr. Burns may establish that if a partner as successful as Ms. Newman is only required to forgo her bonus for her comments and behavior, the potential for his experience to recur with other members of the Firm is likely, and as such, the remedial measure is not reasonably calculated under the circumstances. Katz, 709 F.2d at 256. Furthermore, in *Ellison*, the Court made clear that the victim of sexual harassment should not be required to work at a less desirable location. Ellison, 924 F.2d at 882. In the present matter, Mr. Burns has communicated that he does not wish to work in the Firm's Chicago office and would prefer to stay in its Raleigh office. Mr. Burns' stance is analogous to the plaintiff in *Ellison*, who did not desire to be transferred from her original office. *See Id.* The Court, in that case, found that because the defendant

transferred the plaintiff rather than her harasser, it was punishing the victim for the conduct of her harasser. *See Id*. Here, Mr. Burns may assert that the Firm's decision to transfer him to its Chicago office rather than Ms. Newman may be perceived as a punishment for Mr. Burns rather than his alleged harasser. Consequently, it is likely that Mr. Burns will be able to successfully assert the Firm has not provided a sufficient remedy reasonably calculated under the circumstances.

Unlike in *Nash*, where the Court found that the transfer of the victim was a sufficient remedial measure because the defendant did not have any corroborating evidence of the harassment, Mr. Burns may persuade a court to determine otherwise. *See* Nash, 9 F.3d at 404 (citing Harris, 510 U.S. at 21.) In *Nash*, the Court found the prompt investigation by the defendant, and its decision to transfer the plaintiff to another department with no pay reduction, was sufficient because there was no corroborating evidence that harassment had occurred. *Id*. In that case, the defendant denied engaging in harassment, and no co-workers could attest to any offensive behavior. *Id*. However, in Mr. Burns' matter, he may establish that Ms. Newman did not deny that she engaged in harassing behavior. *See Id*. On the contrary, Mr. Burns may assert that because Ms. Newman stopped speaking to him after he placed the sexual harassment article on her desk, Ms. Newman never explicitly denied engaging in harassing behavior, and she voluntarily agreed to forgo her bonus; these actions may be perceived as an admission of some wrongdoing on her behalf. *See Id*. Furthermore, Mr. Burns may present corroborated evidence of his harassment through testimony by Joanne Mimms, who was present during the holiday party when Ms. Newman attempted to show Mr. Burns her breast. *See Id*. Additionally, Ms. Mimms was informed about all instances of Mr. Burns' harassment, which bolsters his argument that this matter is distinct from *Nash*. *See Id*. Thus, it is likely Mr. Burns may successfully argue that because the Firm's actions do not deter potential harassers and Mr. Burns can corroborate his assertions of harassment; the Firm has not provided a sufficient remedial measure.

Dissimilar to *Portera*, where the Court found that the transfer of the harasser rather than the victim was a sufficient remedial measure, Mr. Burns may prompt a court to find otherwise. Portera, 996 F. Supp. 1427 (citing Harris, 510 U.S. at 21.) In *Portera*, the Court held that the plaintiff may not assert the defendant failed to take remedial action because the plaintiff initially requested a transfer. Upon that request, the defendant offered her another position which she accepted. *Id*. Here, Mr. Burns may establish that he did not request a transfer to the Chicago office of the Firm. Additionally, unlike the plaintiff in *Portera*, Mr. Burns had no opportunity to choose whether to stay in the Raleigh office or be transferred. *Id*. Moreover, in *Portera*, the Court found that although the defendant initially considered transferring the plaintiff, it ultimately transferred her harasser. *Id*. Here, Mr. Burns may assert that a court should find differently because, unlike the defendant in *Portera*, the Firm merely agreed with Ms. Newman to forgo her bonus and decided to transfer Mr. Burns. *Id*. Therefore, it is likely that Mr. Burns may successfully argue that the agreement to forgo Ms. Newman's bonus and the Firm's decision to transfer him does not deter potential harassers, and as such, would not constitute a sufficient remedial measure.

Thus, Mr. Burns may likely establish that the voluntary surrender of Ms. Newman's bonus and the Firm's reassignment of him to the Chicago office, were insufficient remedial measures because they failed to deter potential harassers. *See* Ellison, 924 F.2d at 882.

CONCLUSION

Mr. Burns may successfully assert the necessary factors to impute liability to the Firm for Ms. Newman's severe and pervasive actions, and its failure to provide sufficient remedial measures. Mr. Burns can establish that because Ms. Newman was his supervisor when she refused to speak to him and reduced his caseload after he placed the sexual harassment article on her desk, she committed a tangible employment action. *See* Burlington Indus., 524 U.S. at 745. Moreover, Mr. Burns may show that Ms. Newman's comments and attempt to show him her breasts at the holiday party were severe and pervasive because of their power dynamic and the frequency of her actions. *See* Jennings, 482 F.3d at 696. Furthermore, Mr. Burns may assert that the voluntary surrender of Ms. Newman's bonus and the Firm's reassignment of him to its Chicago office was insufficient remedial measures. The actions taken by the Firm do not discourage or deter future harassers, and as such, they are an inadequate remedy. *See* Ellison, 924 F.2d at 882. Therefore, Mr. Burns may successfully prove that he is a victim of sexual harassment.

Applicant Details

First Name	**Gabriel**
Last Name	**Scavone**
Citizenship Status	**U. S. Citizen**
Email Address	**gscavone@law.gwu.edu**
Address	**Address** Street **1771 N. Pierce St., Apt. 1817** City **Arlington** State/Territory **Virginia** Zip **22209**
Contact Phone Number	**407-620-3670**

Applicant Education

BA/BS From	**Rollins College**
Date of BA/BS	**May 2020**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/LLB	**May 1, 2023**
Class Rank	**20%**
Law Review/Journal	**Yes**
Journal(s)	**The George Washington Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Van Vleck Constitutional Law Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Byron, Paul
paul_g_byron@flmd.uscourts.gov
407-496-3792

Trangsrud, Roger
rtrang@law.gwu.edu
(703) 534-3119

Pollack, Charles
pollackc@law.gwu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

GABRIEL SCAVONE

1771 N Pierce St, Arlington, VA 22209 • (407) 620-3670 • gscavone@law.gwu.edu

March 24, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a third-year student at The George Washington University Law School and am writing to apply for a judicial clerkship with you for the August 2024–2025 term.

After graduation and upon completion of the D.C. bar examination, I will be working fulltime as a litigation associate in the Washington D.C. office of Steptoe & Johnson LLP until the beginning of the clerkship term.

I believe I am well equipped to contribute to your chambers and assist in the management of your docket. I have honed precise legal writing and technical editing skills through my experience as Senior Managing Editor of *The George Washington Law Review* and while serving as a judicial intern in two separate federal courts. I am detail-oriented, a hard-working former student athlete, and am eager to learn under your guidance.

Accompanying this letter, please find a resume, writing sample, and transcripts. Please also find recommendations from Professors Pollack and Trangsrud, as well as a recommendation from the Honorable Paul G. Byron. Thank you for your consideration.

Respectfully,

Gabriel Scavone

GABRIEL SCAVONE

1771 N Pierce St., Apt. 1817, Arlington, VA 22209 • (407) 620-3670 • gscavone@law.gwu.edu

EDUCATION

The George Washington University Law School — Washington, D.C.
J.D., cum laude — May 2023
GPA: 3.603 Class Rank: 142/526
Activities: *The George Washington Law Review*, Senior Managing Editor, Volume 91; Alternative Dispute Resolution Board, Member; Van Vleck Moot Court Competition; GW Law Softball
Honors: Spanogle Commercial Arbitration Competition, Best Brief Award; Dean's Pro Bono Service Award; Presidential Volunteer Service Award

University of Miami School of Law — Coral Gables, FL
J.D. Candidate – Completed 1L Year — August 2020 – May 2021
GPA: 3.628 Class Rank: Top 17%
Honors: Dean's Merit Scholarship Recipient; Dean's List Spring 2021

Rollins College — Winter Park, FL
B.A, in Philosophy; *Minor in Political Science, cum laude* — May 2020
Activities: Student Athlete – Rollins College Men's Varsity Baseball Team
Honors: Athletic Conference Honor Roll (four semesters); Dean's List (four semesters)

EXPERIENCE

The Jacob Burns Community Legal Clinics, Public Justice Advocacy Clinic — Washington, D.C.
Student Attorney — January 2023 – May 2023
- Represented indigent clients in wage and unemployment compensation matters
- Negotiated two settlements with opposing counsel and achieved settlement on behalf of clients

The George Washington Law Review — Washington, D.C.
Senior Managing Editor, Volume 91 — March 2022 – May 2023
- Reviewed and completed substantive and technical edit of entire law review issue before publication

Steptoe & Johnson LLP — Washington, D.C.
Summer Associate — June 2022 – August 2022
- Analyzed caselaw and provided team with memoranda to assist in litigation planning, including analysis of fair use affirmative defense in a copyright infringement case, and the Fifth Amendment privilege
- Evaluated police brutality cases as part of firmwide pro bono project

United States Court of Federal Claims — Washington, D.C.
Judicial Intern to The Honorable Marian B. Horn — January 2022 – April 2022
- Drafted orders and memoranda pertaining to Tucker Act Jurisdiction and attorney's fees

United States District Court for the Middle District of Florida — Orlando, FL
Judicial Intern to The Honorable Paul G. Byron — May 2021 – July 2021
- Attended court hearings and engaged in daily case discussions with Judge Byron
- Reviewed case records and drafted various orders, including an order on motions for summary judgment

INTERESTS

- Baseball; visiting every MLB park; hiking; paddleboarding; golf; running; trying new restaurants

54477408 Sex
Student ID

06/29/2021

UNIVERSITY OF MIAMI

MIAMI

CORAL GABLES, FLORIDA 33124

Scavone, Gabriel
1746 Fairview Shores Dr.
Orlando, FL 32804

Academic Program

School of Law
Active in Program
Law

Beginning of Law Record

Fall 2020

UM_Crs_ID	Course Title	Credits	Grade	Qty Pts
LAW 11	CIVIL PROCEDURE I Anthony Alfieri	3.000	A-	11.100
LAW 14	PROPERTY Andres Sawicki	4.000	A	16.000
LAW 15	TORTS Zanita Fenton	4.000	B	12.000
LAW 19	LEGAL COMM & RSCH I Jarrod Reich	2.000	B+	6.600

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	3.515	UM Semester Totals	13.000	13.000	45.700
UM Cumulative GPA	3.515	UM Cumulative Totals	13.000	13.000	45.700

Spring 2021

UM_Crs_ID	Course Title	Credits	Grade	Qty Pts
LAW 12	CONTRACTS Andrew Dawson	4.000	A-	14.800
LAW 16	CRIMINAL PROCEDURE Scott Sundby	3.000	B+	9.900
LAW 17	U.S CONST LAW I Frances Hill	4.000	A-	14.800
LAW 29	LEGAL COMM & RSCH II Cheryl Zuckerman	2.000	A	8.000
LAW 320	SUBSTANTIVE CRIMINAL LAW Martha Mahoney	3.000	A	12.000

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	3.719	UM Semester Totals	16.000	16.000	59.500
UM Cumulative GPA	3.628	UM Cumulative Totals	29.000	29.000	105.200

Term Honor: DEAN'S LIST

Law Career Totals

			Earned Credits	Graded Credits	Qty Pts
UM Cumulative GPA	3.628	UM Cumulative Totals	29.000	29.000	105.200
		Cumulative Transfer Totals	0.000		
		Cumulative Combined Totals	29.000		

End of Law

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G43417108
Date of Birth: 09-SEP

Date Issued: 24-MAY-2023

Record of: Gabriel Scavone

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: GABRIEL SCAVONE
GSCAVONE@LAW.GWU.EDU

REFNUM:4386553

Current College(s):Law School
Current Major(s): Law

Degree Awarded: J D 21-MAY-2023
With Honors
Major: Law

JD RANK: 142/526

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
NON-GW HISTORY:			
2020-2021	University of Miami		
LAW 6202	Contracts	4.00	TR
LAW 6206	Torts	4.00	TR
LAW 6208	Property	4.00	TR
LAW 6210	Criminal Law	3.00	TR
LAW 6212	Civil Procedure	3.00	TR
LAW 6214	Constitutional Law I	4.00	TR
LAW 6216	Fundamentals Of Lawyering I	2.00	TR
LAW 6217	Fundamentals Of Lawyering II	2.00	TR
LAW 6360	Criminal Procedure	3.00	TR
Transfer Hrs: 29.00			
Total Transfer Hrs: 29.00			
GEORGE WASHINGTON UNIVERSITY CREDIT:			
Fall 2021			
Law School			
Law			
LAW 6209	Legislation And Regulation Sage	3.00	B+
LAW 6218	Prof Responsibility & Ethics Lee	2.00	A-
LAW 6250	Corporations Mitchell	4.00	A-
LAW 6400	Administrative Law Pierce	3.00	B+
LAW 6657	Law Review Note	1.00	H
Ehrs 13.00 GPA-Hrs 12.00 GPA 3.500			
CUM 13.00 GPA-Hrs 12.00 GPA 3.500			
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			
********** CONTINUED ON NEXT COLUMN **********			

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Spring 2022			
Law School			
Law			
LAW 6236	Complex Litigation Trangsrud	3.00	A
LAW 6280	Secured Transactions Maggs	2.00	A
LAW 6380	Constitutional Law II Smith	4.00	A-
LAW 6642	Adr Competition (Spanogle) Johnson	1.00	CR
LAW 6657	Law Review Note	1.00	H
LAW 6668	Field Placement Mccoy	2.00	CR
LAW 6669	Judicial Lawyering Smith	2.00	B+
Ehrs 15.00 GPA-Hrs 11.00 GPA 3.758			
CUM 28.00 GPA-Hrs 23.00 GPA 3.623			
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			
Fall 2022			
LAW 6230	Evidence Saltzburg	4.00	A
LAW 6300	Federal Income Taxation Bearer-Friend	3.00	A-
LAW 6644	Moot Court - Van Vleck	1.00	CR
LAW 6648	Negotiations Juni	2.00	A-
LAW 6658	Law Review	1.00	CR
LAW 6683	College Of Trial Advocacy Saltzburg	3.00	B
Ehrs 14.00 GPA-Hrs 12.00 GPA 3.611			
CUM 42.00 GPA-Hrs 35.00 GPA 3.619			
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			
Spring 2023			
LAW 6232	Federal Courts	4.00	B+
LAW 6622	Public Justice Advocacy Clinic	6.00	A-
LAW 6652	Legal Drafting	2.00	A-
LAW 6658	Law Review	1.00	CR
Ehrs 13.00 GPA-Hrs 12.00 GPA 3.556			
CUM 55.00 GPA-Hrs 47.00 GPA 3.603			
********** CONTINUED ON PAGE 2 **********			

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G43417108
Date of Birth: 09-SEP

Date Issued: 24-MAY-2023

Record of: Gabriel Scavone

Page: 2

SUBJ NO COURSE TITLE	CRDT	GRD PTS

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	55.00	47.00	169.33	3.603
TOTAL NON-GW HOURS	29.00	0.00	0.00	0.00
OVERALL	84.00	47.00	169.33	3.603

########## END OF DOCUMENT ##########

Katie Cloud
Interim University Registrar

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All colleges and schools beginning Fall 2010 semester:

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2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
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6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
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001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
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201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School
Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
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After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
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School of Public Health and Health Services before Fall 2010 semester:

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201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

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CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS
Undergraduate Grading System
A, Excellent; *B*, Good; *C*, Satisfactory; *D*, Low Pass; *F*, Fail; *I*, Incomplete; *IPG*, In Progress; *W*, Authorized Withdrawal; *Z*, Unauthorized Withdrawal; *P*, Pass; *NP*, No Pass; *AU*, Audit. When a grade is assigned to a course that was originally assigned a grade of *I*, the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added: *A-, B+, B-, C+, C-, D+, D-*.
Effective Summer 1980: The grading symbols: *P*, Pass, and *NP*, No Pass, replace *CR*, Credit, and *NC*, No Credit.

Graduate Grading System
(Excludes Law and M.D. programs.) *A*, Excellent; *B*, Good; *C*, Minimum Pass; *F*, Failure; *I*, Incomplete; *IPG*, In Progress; *CR*, Credit; *W*, Authorized Withdrawal; *Z*, Unauthorized Withdrawal; *AU*, Audit. When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System
A+, A, A-, Excellent; *B+, B, B-*, Good; *C+, C, C-*, Passing; *D*, Minimum Pass; *F*, Failure; *CR*, Credit; *NC*, No Credit; *I*, Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System
H, Honors; *HP*, High Pass; *P*, Pass; *F*, Failure; *IP*, In Progress; *I*, Incomplete; *CN*, Conditional; *W*, Withdrawal; *X*, Exempt, *CN/P*, Conditional converted to Pass; *CN/F*, Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Honorable Paul G. Byron
401 W. Central Blvd., Suite 4650
Orlando, Florida 32801
(407) 835-4321

June 21, 2022

Re: Letter of Recommendation
Mr. Gabriel Scavone

Dear Sir or Madam,

I am writing to recommend Mr. Scavone for your consideration. Mr. Scavone worked as a legal intern in my chambers during the summer of 2021. Summer interns assist my term law clerks with legal research, attend jury trials, and observe a variety of hearings. Additionally, I provide my summer interns the opportunity to draft an order on a dispositive motion. Mr. Scavone readily assumed responsibility for drafting an order on cross motions for summary judgement in a case involving alleged violations of § 1983. The order prepared by Mr. Scavone was exceptionally well-reasoned and resolved the case. This is a very impressive accomplishment particularly for a student who has just completed the first year of law school.

During the summer, I interacted with Mr. Scavone daily and found him to be a young man of exceptional character and intellect. He consistently comports himself with a maturity far beyond his years. Mr. Scavone is a well-rounded and very agreeable person, and it was a pleasure to have him in chambers for the summer. My only regret is that I do not have a term law clerk position available for 2023. I recommend Mr. Scavone to you without reservation, and I am confident he will make a valuable contribution to your office.

I am available at your convenience to discuss his many fine qualities and his candidacy should you desire additional information.[1]

Sincerely,

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

[1] Paul_G_Byron@flmd.uscourts.gov or (407) 835-4321.

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Gabriel Scavone as an outstanding candidate for a clerkship with your Honor.

I know Gabriel well. He was my student this spring in my Complex Litigation course. This is a small class [about 30 students] which attracts some of the brightest students at the law school who have an interest in civil litigation and clerking. The class focuses on class actions, MDL non-class aggregate litigation, discovery of ESI, and trial and pre-trial complexity. Gabriel earned one of the highest grades I awarded in the class.

Whenever I called on Gabriel in class he always gave sophisticated and thoughtful answers. He is an unusually hard working and gifted student. As a transfer student from Miami, he wrote his way on to our top journal – the GW Law Review. This is something very few transfer students accomplish. His good work on the journal led to his selection as a Senior Managing Editor.

If Gabriel joins your chambers, he will be one of the most well prepared clerks you have ever hired. While in Florida he interned with Paul Byron of the United States District Court for the Middle District of Florida and in DC with Judge Marian Horn of the Court of Federal Claims. This summer he will gain valuable experience as a summer associate with Steptoe and Johnson. You can be sure he will hit the ground running on the first day of his clerkship.

Gabriel was a Philosophy Major in college and a successful student-athlete. He has battled his way through the pandemic like many of his classmates. As a first generation law student, he has come far. I predict he will be one of your best clerks. He certainly promises to be a formidable civil litigator as he moves forward with his career.

If you have any questions for me about Gabriel, please call me [202-994-6182] or send an email [rtrang@law.gwu.edu]. Best regards.

Very truly yours,

Roger H. Trangsrud
James F. Humphreys Professor of Civil Procedure and Complex Litigation

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this recommendation letter on behalf of Mr. Gabriel "Gabe" Scavone who I understand is applying for a federal clerkship position. I am well qualified to speak on Mr. Scavone's legal research, writing, and oral communication skills as he enrolled in my scholarly writing course for the 2021-22 academic year.

Mr. Scavone is both a good writer and diligent researcher. He communicates clearly and effectively, without needing a prompt to offer a response. It is plainly obvious that Mr. Scavone cares about his work and is thoughtful in its completion. Mr. Scavone is professional in his demeanor and responds well to feedback, both positive and critical. Most importantly, he applies the feedback to improve his work product.

As an example, Mr. Scavone was tasked with drafting an 8,000-word Note to complete the scholarly writing course. Mr. Scavone chose to write about police accountability following the US Supreme Court's decision in Devenpeck v. Alford. Specifically, Mr. Scavone argued that the Devenpeck decision fosters police unaccountability because it unfairly denies recourse to plaintiffs who are arrested without probable cause for the crime identified by a police officer at the time of arrest. Mr. Scavone's final Note was exceptional as compared to his peers. Mr. Scavone received the highest grade in the class on this assignment after he thoughtfully drafted and revised it. Mr. Scavone asked me pointed questions throughout the process to tailor his research so the final product answered a legal problem with a precise legal solution. I encourage you to review this submission if Mr. Scavone elects to provide it.

Mr. Scavone is a person who I always knew prepared for class and would actively participate. Mr. Scavone frequently volunteered answers to posed questions or in response to his classmates. Mr. Scavone's classroom performance and overall demeanor helped him to achieve the position as Senior Managing Editor on The George Washington Law Review for the 2022-23 academic year. I am extremely confident that Mr. Scavone will serve as a tremendous resource for authors drafting scholarly articles next academic year.

Ultimately, I think Mr. Scavone will thrive in any environment that requires collaboration with others, like a federal clerkship position. Mr. Scavone will do well in assisting his judge to draft any document required or to perform thorough legal research. Mr. Scavone has insightful views to share and I know he will actively contribute as a judicial clerk.

Sincerely,
Charles R. Pollack
Associate General Counsel
Professorial Lecturer in Law

Charles Pollack - pollackc@law.gwu.edu

GABRIEL SCAVONE

1771 N Pierce St., Apt. 1817, Arlington, VA 22209 • (407) 620-3670 • gscavone@law.gwu.edu

Writing Sample

The following writing sample is a portion of the moot court appellate brief that I prepared as part of the 2022 Van Vleck Constitutional Law Moot Court Competition at my law school. For brevity, I have included only a brief statement of the case and my argument section.

I represented the Respondent in this matter, the superintendent of elections of a fictional state, and addressed the procedural issue of whether the federal courts have jurisdiction to hear the Petitioner's constitutional challenge to a fictional state statute that allows voters to challenge the qualifications of candidates running for federal electoral office.

This writing sample reflects my sole work product and was not edited or reviewed by anyone else.

STATEMENT OF THE CASE

Pursuant to N.C. Gen Stat. § 107–18.3 (the "N.C. Challenge statute"), any qualified voter registered in the same district as a candidate for any elective office in the state may file a challenge that the Candidate does not meet the constitutional or statutory qualifications for the office. Petitioner, Sean O'Shaghnessy serves as the member of Congress for New Columbia's sixth congressional district and filed a notice of candidacy for the upcoming general election on May 16, 2022. On May 20, 2022, three registered voters in the sixth congressional district filed a challenge under the N.C. Challenge statute to Petitioner's candidacy with the N.C. Superintendent of Elections alleging that Petitioner had violated Section 3 of the Fourteenth Amendment by engaging in an insurrection. U.S. CONST. amend XIV, § 3. Voters assert that representative O'Shaghnessy either helped to plan the attack on January 6, or alternatively assisted those who did plan the January 6th attack, thereby disqualifying him from holding federal electoral office.

On May 24, 2022, Petitioner filed suit against the N.C. Superintendent of Elections in the District Court for the District of New Columbia, seeking to enjoin the state proceeding on the ground that the N.C. Challenge statute unconstitutionally permits New Columbia to make an independent evaluation of a candidate's qualifications, which is allegedly a power exclusively given to the U.S. House of Representatives in Article I, Section 5 of the Constitution. The District Court set a hearing date for seven days before the hearing before the N.C. Superintendent of Elections was to take place. Respondent agreed to stay all proceedings until the District Court decided the case.

On June 1, 2022, Respondent filed a motion to dismiss, arguing that the state proceeding should proceed because Petitioner has no standing due to lack of injury, the claim is not ripe, and the federal court is precluded from interfering in the state matter. The District Court dismissed the

complaint without prejudice on June 15, 2022, finding the matter premature. *O'Shaghnessy v. Morgenthal*, No. 22-sy-0428933, 4–5 (D.D.N.C June 15, 2022).

Petitioner immediately appealed to the Court of Appeals for the Thirteenth Circuit. On July 26, 2022, the appellate court issued an order affirming the ruling of the district court's dismissal of the case, finding that the case was premature and rejecting Petitioner's argument that Article I, Section 5 is the exclusive means for determining eligibility to the House of Representatives. *O'Shaghnessy v. Morgenthal*, No. 22-1623556, 4 (13th Cir. July 26, 2022). Petitioner timely filed a petitioner for a writ of certiorari, which this Court granted on August 29, 2022.

ARGUMENT

I. THE FEDERAL COURTS DO NOT HAVE JURSDICTION UNDER ARTICLE III TO ADJUDICATE PETITIONERS CHALLENGE TO N.C. GEN. STAT. § 107–18.3

A. The Federal Courts Do Not Have Jurisdiction Under Article III Because Petitioner Has Not Suffered an Injury in Fact

Federal courts "do not possess a roving commission to publicly opine on every legal question." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). Under Article III of the Constitution, a federal court's jurisdiction is limited to "Cases" and "Controversies." U.S. CONST. art. III, § 2. The Supreme Court has established three standing requirements as the "irreducible constitutional minimum." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To establish standing, a plaintiff must show (1) an injury in fact—i.e., that they have suffered a past or imminent injury; (2) a causal connection between the injury and the suffered harm; and (3) a likelihood that a favorable court ruling will redress the injury. *See id.* at 560–61.

At issue in this case is whether Petitioner suffered an injury in fact by being subjected to proceedings under the N.C. Challenge statute, which the Petitioner alleges is unconstitutional.

An injury in fact must be "concrete, particularized, and actual or imminent"—that is, "real, and not abstract." *TransUnion*, 141 S. Ct. at 2203–04 (quoting *Spokeo, Inc., v. Robins*, 578 U.S. 330, 340 (2016)). This requirement ensures that plaintiffs have a "personal stake" in the case. *Id.* at 2203. It also ensures that the federal courts "do not adjudicate hypothetical or abstract disputes." *Id.*

With those concerns in mind, a mere risk of future harm, without more, does not suffice. A claim of future injury qualifies as a concrete harm "if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)).

In the context of threatened enforcement of the law, "it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Still, to satisfy the injury in fact requirement based on threatened enforcement of the law, the plaintiff must allege: (1) "an intention to engage in a course of conduct arguably affected with a constitutional interest," (2) that is "proscribed by a statute," and (3) the existence of "a credible threat of prosecution thereunder." *Susan B. Anthony List*, 573 U.S. at 159 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)).

Here, the Petitioner has not alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest." *Id.* This is because Petitioner fails to allege that their *future* conduct will subject them to further proceedings under the N.C. Challenge statute. On the contrary, it is Petitioner's *past* conduct of alleged participation in the January 6th insurrection that has subjected them to proceedings under the N.C. Challenge statute. Unless Petitioner intends to

engage in borderline unconstitutional conduct in the future that may subject them to further challenges to their candidacy under the N.C. Challenge statute, then they have not alleged a future course of conduct sufficient to meet the injury in fact standard as put forth in *Susan B. Anthony List*. *See id.*

Next, even if the Petitioner did allege that they intend to engage in future conduct that would subject them to further proceedings under the N.C. Challenge statute, such conduct would not be proscribed by the statute they wish to challenge. *Id.* The N.C. Challenge statute does not proscribe any conduct. The statute merely provides a unique vehicle for voters and the state of New Columbia alike to regulate their substantial interest in the candidates they place on the ballot. *See* N.C. Gen. Stat. § 107–18.3(a)–(e) (providing a mechanism for voters to challenge candidate qualifications, but not proscribing any particular candidate conduct).

Finally, there is no credible threat of prosecution under the N.C. Challenge statute for any future conduct. As the Court in *Susan B. Anthony List* put it, "[p]ast enforcement against the same conduct is good evidence that the threat of enforcement is not 'chimerical.'" *Susan B. Anthony List*, 573 U.S. at 164 (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)). There is no history of past enforcement in this case—Petitioner was not the subject of a complaint in past election cycles. And again, even if Petitioner was subject to past enforcement, Petitioner has failed to allege any course of future conduct that would subject them to similar proceedings.

This case is readily distinguishable from *Susan B. Anthony List*, in which the Petitioner and the dissent of the court of appeals below rely. In that decision, Susan B. Anthony List, a pro-life advocacy organization announced that it intended to put up a billboard asserting that Congressman Steven Driehaus supported taxpayer-funded abortion. *Id.* at 153–54. Driehaus filed a complaint with the Ohio Elections Commission alleging that Susan B. Anthony List violated Ohio's

campaign laws by making false statements about his voting record. *Id.* at 154. Susan B. Anthony List responded by filing a complaint in federal district court, alleging that the Ohio law infringed upon its First Amendment rights. *Id.* The district court dismissed for lack of standing and ripeness and the Court of Appeals for the Sixth Circuit affirmed. *Id.* at 156. This Court reversed, holding that Susan B. Anthony List had standing to pursue their legal claims before the statute had been enforced against them—i.e., before they had put up the billboard that allegedly would have been prohibited under Ohio Law. *See id.* at 168.

The Court found that Susan B. Anthony List sufficiently asserted an injury in fact because: (1) petitioners plead specific statements that they intended to make in the *future* and intent to engage in substantially similar activity in the future, (2) the Ohio statute at issue arguably covered and proscribed the subject matter of petitioners' intended *future* speech, and (3) there was a threat of future enforcement against petitioners because they were the subject of a complaint in a *past* election cycle. *Id.* at 161–63.

As described in detail, *supra* pp. 3–4, Petitioner has failed to allege that any of those conditions were met in this case. Petitioner has not alleged any future conduct that they intend to engage in that is arguably proscribed by the N.C. Challenge statute, or that any threat of future enforcement is more than merely conjectural due to past enforcement of the N.C. Challenge statute.

In sum, the threatened enforcement of the N.C. Challenge statute—even if administrative proceedings have begun—is not sufficiently imminent because Petitioner has failed to allege the existence of a future injury that is "certainly impending" or that there is "a substantial risk" that the harm will occur. *Susan B. Anthony List*, 573 U.S. at 158 (internal quotations omitted). For that reason, the Respondent respectfully requests that this Court affirm the decision of the court of appeals below dismissing Petitioner's case for lack of Article III standing.

B. The Federal Courts Do Not Have Jurisdiction Under Article III Because Petitioner's Challenge is Not Ripe for Review

In addition to featuring a plaintiff that has a proper stake in the litigation, constitutionally valid cases or controversies under Article III of the Constitution must come at the right time—that is, federal courts cannot consider constitutional issues prematurely. "Ripeness thus responds to a separation of powers concern by postponing judicial intervention until it is clear a dispute exists that can and should be resolved by a court." WILLIAM D. ARAIZA, UNDERSTANDING CONSTITUTIONAL LAW, 61 (5th ed. 2020).

The ripeness inquiry is twofold: First, the court must evaluate whether the issue in question is fit for judicial review at the time the suit is brought, and second, the court must evaluate the hardship to the parties that would ensue if judicial review were delayed. *See Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967). Fitness for review turns on whether the claim relies on facts that are still contingent, or whether the issue presents questions that are "purely legal, and will not be clarified by further factual development." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985). The hardship factor is prudential and requires an equitable consideration of the hardship that would occur if prompt judicial review were delayed. *See, e.g., Susan B. Anthony List*, 573 U.S. at 167.

The doctrines of standing and ripeness both originate from the same Article III limitations, and thus, the Court has increasingly recognized that the standing and ripeness often "boil down to the same question." *Id.* at 157 n.5 (internal quotations omitted) (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128, n.8 (2007)). As discussed, *supra* Section I.A, Petitioner has failed to allege an injury in fact sufficient to support Article III standing. This consideration weighs in favor of there being a lack of ripeness in this case as well. *See Susan B. Anthony List*, 573 U.S. at 157 n.5.

But even if Petitioner had alleged a sufficient injury in fact, this case is still not ripe for adjudication by the federal courts. Concededly, Petitioner's challenge to the N.C. Challenge statute may present an issue that is legal in nature—i.e., whether the N.C. Challenge statute conflicts with Article I, Section 5 of the Constitution. Even so, Petitioner has failed to adequately allege that they will suffer hardship if prompt judicial review by the federal courts were to be delayed.

The denial of prompt judicial review by the federal courts would not impose hardship on Petitioner because it would not force Petitioner to change the course of their future conduct. *See id.* at 167–68. Petitioner still intends to run for office and will have adequate opportunity in the New Columbia administrative hearing[1] and the state courts of New Columbia (if Petitioner is subject to an adverse decision) to establish that they did not violate the constitution, as well as challenge the constitutionality of the New Columbia statute.[2]

It is true that this Court has found that a reasonable threat of prosecution and the actual filing of an administrative action threatening sanctions may give rise to a ripe controversy. *See Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 625–26 n.1 (1986). Similarly, here, an administrative action threatening to disqualify Petitioner from office has already commenced. Additionally, the potential consequences of an adverse ruling by the N.C. Superintendent of Elections are great—namely, that Petitioner will be disqualified from running from office.

That said, Petitioner has not yet been subject to an adverse ruling by the N.C. Superintendent of Elections. And, moreover, Petitioner failed to respond to any motions or

[1] *See* N.C. Gen. Stat. § 107–18.4(a)–(c) (describing procedure for administrative hearing conducted by the New Columbia Superintendent of Elections on an accelerated schedule).

[2] *See* N.C. Gen. Stat. § 107–18.6 (allowing for appeals of any final decision of the Superintendent under §107–18 directly to the New Columbia Supreme Court).

discovery requests in the upcoming administrative hearing before filing suit in federal court. The ultimate hardship that Petitioner may suffer as a result of the threatened enforcement of the N.C. Challenge statute is thus too conjectural and too far removed for the federal courts to intervene before these issues are hashed out in the state courts of New Columbia through the expedited process provided for in the N.C. Challenge statute. In short, it is simply too early for Petitioner to pursue their claim in the federal courts, even if an administrative action threatening to disqualify petitioner from office has already commenced in its early stages.

For the aforementioned reasons, Petitioner's claim is not ripe for review by the federal courts, and the Respondent respectfully requests that this Court affirm the court of appeals dismissal of Petitioner's case for lack of Article III standing.

C. The Federal Courts Should Abstain From Interfering With the Ongoing New Columbia Proceedings

"Our Federalism," Justice Black famously wrote, envisions "a system in which there is sensitivity to the legitimate interests of both State and National Governments," and "in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger v. Harris*, 401 U.S. 37, 44 (1971).

With these concerns of federalism and comity in mind, the Supreme Court formed the *Younger* abstention doctrine, under which federal courts abstain from enjoining ongoing state-court proceedings that are criminal in nature or would otherwise interfere with an important interest in the state's administration of its judicial system.[3] *Id.* at 53. Even the possible unconstitutionality

[3] *Younger* itself only addressed federal abstention with ongoing state criminal prosecution. *Younger* was later extended by the Court to civil judicial proceedings involving important state interests. *See Juidice v. Vail*, 430 U.S. 327, 335 (1977) (holding that the *Younger* abstention doctrine was applicable to a civil contempt proceeding where important state interest was implicated); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987) (holding that *Younger* abstention doctrine was applicable to state civil proceedings involving only private parties where an important state

of a statute on its face, the Court put it, does not warrant federal court interference with ongoing state proceedings, absent extreme circumstances. *Id.* at 54 ("[T[he possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it.").

The Court in *Middlesex County Ethics Commission. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982) devised a familiar three-pronged test to determine when *Younger* abstention is appropriate: (1) the state matter that is the purported basis for abstention must be an "ongoing state judicial proceeding," (2) the ongoing state judicial proceeding must implicate "important state interests," and (3) there must be an adequate opportunity in the state proceeding for the party resisting abstention to raise their constitutional challenge. *Middlesex*, 457 U.S. at 432. All three-prongs required for *Younger* abstention as laid out in *Middlesex* are easily met in this case.

First, the proceeding initiated by the N.C. Superintendent of Elections is ongoing. A final administrative decision has not been issued and state court appeals have not been exhausted. *See Huffman v. Pursue Ltd.*, 420 U.S. 592, 608 (1975) (concluding that *Younger* abstention was appropriate where the plaintiff had not yet exhausted state court appeals).

Second, that ongoing proceeding implicates the state of New Columbia's important interest in regulating the qualification and eligibility of its political candidates. *See Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (finding that states have "important regulatory interests" in enforcing state laws that govern "the selection and eligibility of candidates"); *Storer v. Brown*, 415 U.S. 724, 733 (1974) (recognizing that "a State has an interest, if not a duty, to protect the integrity of its

interest was implicated); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431–32 (1982) (holding that the comity and federalism concerns underlying the *Younger* abstention doctrine mandated federal abstention despite the fact that the state bar proceedings at issue were purely administrative).

political processes from frivolous or fraudulent candidacies" (quoting *Bullock v. Carter*, 405 U.S. 134, 145 (1972))).

And finally, there is adequate opportunity for Petitioner to raise their constitutional challenge in the state proceedings because the final decision of the N.C. Superintendent of Elections is immediately appealable to the New Columbia Supreme Court. *See* N.C. Gen. Stat. § 107–18.6; *see also Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986) (finding that "it is sufficient under *Middlesex* . . . that constitutional claims may be raised in state-court judicial review of the administrative proceeding").

In the past, the *Younger* abstention inquiry would end here. But the Court has since defined the outer bounds of the *Younger–Middlesex* analysis in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013). In that decision, Sprint filed a complaint with the Iowa Utilities Board ("IUB") asking for a declaration that it was proper under federal law to withhold charges for certain intercarrier access fees from a telecommunications carrier for long-distance calls. *Sprint*, 571 U.S. at 73–74. The IUB held that federal law allowed non-Sprint providers to extract access charges for the Sprint-originated long-distance calls. *Id.* at 74. Sprint appealed the IUB decision to the Iowa state courts and also filed suit in federal district court seeking declaratory and injunctive relief against enforcement of the IUB order. *Id.* The lower federal courts found *Younger* abstention appropriate, and the Supreme Court granted certiorari. *Id.* at 75.

The Court reversed, clarifying that even if *Younger* abstention is appropriate under *Middlesex*, it applies in only three types of cases: (1) state criminal prosecutions; (2) civil enforcement proceedings; and (3) civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions. *Id.* at 78. The Court held that the IUB proceeding was not a *Younger*-eligible civil enforcement proceeding because it was,

at heart, a proceeding to resolve a private dispute rather than a proceeding initiated or pursued by the state in a sovereign or quasi-criminal capacity. *Id.* at 80. Here, the ongoing New Columbia proceeding is not a state criminal prosecution, so at issue is whether the proceeding falls under the second or third categories of cases required by *Sprint*.

According to the Court in *Sprint*, decisions applying *Younger* to civil enforcement proceedings under *Sprint*'s second category have "generally concerned state proceedings 'akin to a criminal prosecution' in 'important respects.'" *Id.* at 79 (citing *Huffman*, 420 U.S. at 604). The Court in *Sprint* explained that such enforcement proceedings are characteristically initiated by a state actor, who is routinely a party to the action, to sanction the federal plaintiff. *Id.* at 79.

Here, Petitioner's challenge qualifies as a *Younger*-eligible civil enforcement proceeding under *Sprint*'s second category. The ongoing New Columbia civil enforcement proceeding is sufficiently akin to a criminal prosecution to warrant *Younger* abstention because like a criminal prosecution, an adverse decision in the New Columbia civil enforcement proceeding carries serious constitutional penalties. More to the point, the ongoing civil enforcement proceeding is set to determine whether Petitioner participated in insurrection—a federal crime that Petitioner could also be criminally prosecuted for that would similarly render Petitioner incapable of holding federal electoral office. *See* 18 U.S.C. § 2383.[4] Finally, the proceeding was initiated by the N.C. Superintendent of Elections, a state actor, and not private voters because under the N.C. Challenge statute, private voters themselves cannot initiate disqualification proceedings. *See* N.C. Gen. Stat. § 107–18.4(a)(1) (describing process for N.C. Superintendent of Elections to initiate administrative disqualification hearing after a challenge has been filed).

[4] "Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States . . . shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States."

Petitioner's challenge also qualifies as a *Younger*-eligible "civil proceeding[] involving certain orders . . . that are uniquely in furtherance of the state courts' ability to perform their judicial functions" under *Sprint*'s third category of cases. *Id.* at 78. Although no orders have been issued in the ongoing state enforcement proceeding, those orders are due to be issued soon under the expedited schedule provided for by the N.C. Challenge statute and would have already been issued had a stay not been granted pending these federal proceedings. Those orders will undeniably further the New Columbia state courts' ability to perform their judicial functions because New Columbia has established a unique judicial process for reviewing the qualifications of its congressional candidates that cannot be performed if the federal courts wrongfully pass first judgment over those qualifications. Such an interference with New Columbia's statutory scheme in adjudging the qualifications of its candidates goes too far in the other direction from *Younger*, such that the federal courts in exercising jurisdiction would "unduly interfere with the legitimate activities of the States." *See Younger*, 401 U.S. at 44.

In sum, the ongoing New Columbia proceeding is *Younger*-eligible because the proceeding meets each of the three traditional *Middlesex* factors and qualifies both as a civil enforcement proceeding that is akin to a criminal prosecution and a civil proceeding that implicates the New Columbia state courts' important interest in administering their judicial system. Accordingly, Respondent requests that this Court affirm the court of appeals decision to abstain from exercising jurisdiction over Petitioner's federal claims under *Younger*. A holding otherwise would upset well-established principles of federalism and comity that underly *Younger* and destroy the efficacy of challenge statutes like that of New Columbia's.

Applicant Details

First Name	**Cosima**
Last Name	**Schelfhout**
Citizenship Status	**U. S. Citizen**
Email Address	**cs4007@columbia.edu**
Address	**Address** **Street** **39 W 105th St., Apt 1** **City** **New York** **State/Territory** **New York** **Zip** **10025** **Country** **United States**
Contact Phone Number	**6319039481**

Applicant Education

BA/BS From	**Georgetown University**
Date of BA/BS	**May 2018**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 15, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Human Rights Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Paradis, Michel
mp3373@columbia.edu
Shechtman, Paul
paulshechtman1@gmail.com
6467468657
Damrosch, Lori
damrosch@law.columbia.edu
212-854-3740

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Cosima Schelfhout
39 W. 105th St. Apt. 1
New York, NY 10025
(631) 903-9481
cs4007@columbia.edu

June 8, 2023

The Honorable Judge Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I recently graduated from Columbia Law School and I am writing to apply for a clerkship in your chambers for the position open in 2024.

I plan to pursue a career in litigation and eventually work in the public interest. I am certain clerking in your chambers would prove invaluable in pursuit of these goals. I am also certain I have the skills necessary to be a successful district court clerk. Working as a journalist before law school, I learned to write and research effectively and efficiently. Covering breaking news, I translated complicated stories into simple narratives on tight timelines. I honed these skills at Columbia, where I acted as a teaching assistant for President Lee Bollinger and Professor Lori Damrosch, and as a Notes Editor for the Columbia Human Rights Law Review.

I have attached my resume, transcript, and writing sample. I have also included letters of recommendation from Professor Paul Shechtman (646-746-8657, paulshechtman1@gmail.com), Professor Lori F. Damrosch (212-854-3740, damrosch@law.columbia.edu), and Professor Michel Paradis (212-854-5332, mparadis@law.columbia.edu). The Honorable Judge Richard J. Sullivan (212-857-2450, Richard_Sullivan@ca2.uscourts.gov), whose seminar I took last fall, has kindly agreed to act as an additional reference. The writing sample I have included in this application is the final paper I wrote for Judge Sullivan's course, American Jurisprudence: Judicial Interpretation and the Role of the Courts.

Thank you for your consideration. Please contact me if you need additional information.

Respectfully,

Cosima Schelfhout

COSIMA SCHELFHOUT

39 W. 105th St., Apt. 1, New York, NY 10025 • 631-903-9481• cs4007@columbia.edu

EDUCATION

COLUMBIA LAW SCHOOL, New York, NY
J.D., received May 2023
Honors: James Kent Scholar 2021–22 and 2022–23 (for outstanding academic achievement)
Activities: *Columbia Human Rights Law Review*, Notes Editor
Teaching Assistant for International Law, Professor Damrosch (Fall 2022)
Teaching Assistant for Freedom of Speech and the Press, President Bollinger (Fall 2021)
Research Assistant, TrialWatch

GEORGETOWN UNIVERSITY, WALSH SCHOOL OF FOREIGN SERVICE, Washington, DC
B.S.F.S., *magna cum laude*, received May 2018
Activities: *The Hoya,* Features Writer
Georgetown Journal of International Affairs, Section Editor

EXPERIENCE

DISTRICT JUDGE HON. RONNIE ABRAMS, New York, NY
Extern January 2023–May 2023
Conducted legal research on personal jurisdiction, discovery, and class action certification. Attended pre-trial conferences and trials.

KOSOVO SPECIALIST CHAMBERS, The Hague, Netherlands
Legal Intern, Defense Team for Kadri Veseli January 2022–August 2022
Drafted pre-trial motions and prepared memoranda on superior responsibility, judicial notice, and joint criminal enterprise. Conducted evidence review and attended pre-trial hearings.

QUEEN'S COUNTY DISTRICT ATTORNEY'S OFFICE, New York, NY
Extern September 2021−December 2021
Acted as the lead prosecutor on two misdemeanor domestic violence cases at Queens Family Justice Center. Negotiated plea deals, subpoenaed evidence, drafted complaints, and argued pre-trial motions.

U.S. ATTORNEY'S OFFICE, S.D.N.Y., New York, NY
Legal Intern, Criminal Division June 2021−August 2021
Drafted briefs for the Second Circuit. Researched and wrote memoranda. Attended depositions and trials.

BBC NEWS, Washington, DC
Producer September 2018−July 2019
Newsgathering Intern January 2018−September 2018
Secured interviews and conducted research for the production of television specials for BBC World News on subjects including the 2018-19 public trial of El Chapo and first anniversary of the Parkland shooting. Monitored wires and briefed correspondents before live broadcasts.

BBC NEWS NORTH AMERICA EDITOR, JON SOPEL, Washington, DC
Research Assistant December 2018−June 2019
Conducted original research for *A Year at the Circus: Inside Trump's White House (Penguin Books).*

LANGUAGE SKILLS: French (proficient)

INTERESTS: Long-distance running, 20th Century American Poetry**,** travel in Sub-Saharan Africa

Columbia Law School

Registration Services

law.columbia.edu/registration
435 West 116th Street, Box A-25
New York, NY 10027
T 212 854 2668
registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

05/18/2023 11:43:31

Program: Juris Doctor

Cosima Schelfhout

Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6410-1	Constitution and Foreign Affairs	Damrosch, Lori Fisler	3.0	A
L6109-1	Criminal Investigations	Livingston, Debra A.	3.0	B+
L6661-1	Ex. Federal Court Clerk - SDNY	Radvany, Paul	1.0	CR
L6661-2	Ex. Federal Court Clerk - SDNY - Fieldwork	Radvany, Paul	3.0	CR
L6655-1	Human Rights Law Review		0.0	CR
L8876-1	International Criminal Investigations	Davis, Frederick	3.0	A

Total Registered Points: 13.0

Total Earned Points: 13.0

Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6425-1	Federal Courts	Metzger, Gillian	4.0	A-
L6655-1	Human Rights Law Review		0.0	CR
L6274-3	Professional Responsibility	Rose, Kathy	2.0	A-
L8082-1	S. American Jurisprudence: Judicial Interpretation and The Role of Courts	Sullivan, Richard	2.0	A
L8169-1	S. Media Law	Balin, Robert; Klaris, Edward	2.0	A
L6822-1	Teaching Fellows	Damrosch, Lori Fisler	3.0	CR

Total Registered Points: 13.0

Total Earned Points: 13.0

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Shechtman, Paul	3.0	A
L6655-1	Human Rights Law Review		0.0	CR
L6269-1	International Law	Damrosch, Lori Fisler	4.0	A
L6169-3	Legislation and Regulation	Bulman-Pozen, Jessica	4.0	B+
L6695-1	Supervised JD Experiential Study	Paradis, Michel	3.0	A
L6683-1	Supervised Research Paper	Paradis, Michel	1.0	A

Total Registered Points: 15.0

Total Earned Points: 15.0

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6241-1	Evidence	Shechtman, Paul	3.0	A
L6607-1	Ex. Domestic Violence Prosecution	Camillo, Jennifer; Kessler, Scott	2.0	A-
L6607-2	Ex. Domestic Violence Prosecution - Fieldwork	Camillo, Jennifer; Kessler, Scott	2.0	CR
L6655-1	Human Rights Law Review		0.0	CR
L8079-1	Jurisprudence of War [Minor Writing Credit - Earned]	Paradis, Michel	3.0	A
L6675-1	Major Writing Credit	Paradis, Michel	0.0	CR
L6683-1	Supervised Research Paper	Paradis, Michel	2.0	A

Total Registered Points: 12.0

Total Earned Points: 12.0

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6105-1	Contracts	Scott, Robert	4.0	A-
L6108-3	Criminal Law	Liebman, James S.	3.0	B+
L6679-1	Foundation Year Moot Court	Strauss, Ilene	0.0	CR
L6229-1	Ideas of the First Amendment	Abrams, Floyd; Blasi, Vincent	4.0	A
L6130-2	Legal Methods II: Transnational Law and Legal Process	Cleveland, Sarah	1.0	CR
L6121-2	Legal Practice Workshop II	Olds, Victor	1.0	P
L6116-3	Property	Glass, Maeve	4.0	CR

Total Registered Points: 17.0

Total Earned Points: 17.0

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-1	Civil Procedure	Lynch, Gerard E.	4.0	CR
L6133-2	Constitutional Law	Pozen, David	4.0	B
L6113-1	Legal Methods	Ginsburg, Jane C.	1.0	CR
L6115-2	Legal Practice Workshop I	Olds, Victor; Yoon, Nam Jin	2.0	P
L6118-1	Torts	Blasi, Vincent	4.0	B

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 85.0

Total Earned JD Program Points: 85.0

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2022-23	James Kent Scholar	3L
2021-22	James Kent Scholar	2L